


UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 87-C-822-B
	)	
CARL Q. BOYD, et al.,	)	
	)	
Defendants.	)	

DISMISSAL OF CROSS-CLAIM

Defendant Gerald N. Plost hereby dismisses, without prejudice, his cross-claim against Yudean M. Boyd a/k/a Yudean Boyd.

  
\_\_\_\_\_  
William A. Caldwell, OBA #11780  
2727 E. 21st St., Suite 200  
Tulsa, Oklahoma 74114  
(918) 747-8900

ATTORNEY FOR GERALD N. PLOST

OF COUNSEL:

ELLER AND DETRICH  
A Professional Corporation  
2727 E. 21st St., Suite 200  
Tulsa, Oklahoma 74114  
(918) 747-8900

**CERTIFICATE OF MAILING**

31 I, William A. Caldwell, do hereby certify that on this day of December, 1987, the above and foregoing instrument was mailed with sufficient postage thereon prepaid to:

Phil Pinnell, Esq.  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103

Carl Q. Boyd  
5451 North Hartford  
Tulsa, Oklahoma 74126

Yudean M. Boyd  
a/k/a Yudean Boyd  
5451 North Hartford  
Tulsa, Oklahoma 74126

State of Oklahoma ex rel  
Oklahoma Tax Commission  
2501 Lincoln Blvd.  
Oklahoma City, Oklahoma 73194

County Treasurer  
Tulsa County Courthouse  
Tulsa, Oklahoma 74103

Board of County Commissioners  
Tulsa County Courthouse  
Tulsa, Oklahoma 74103

  
\_\_\_\_\_  
William A. Caldwell

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: The Petition for Writ  
of Habeas Corpus  
pursuant to 28 U.S.C.  
§§2254 and 2255, of:

GAIL A. CANTRELL,  
Petitioner,

-VS-

JOHN GRIDER,  
Acting Director for the  
Oklahoma Dept. of Corrections,

ROBERT HENRY,  
Attorney General of the  
State of Oklahoma,

WILLIAM L. WEBSTER,  
Attorney General of the  
State of Missouri,


Respondents.

CASE NO. 87-C-907-B

*Notice of*  
**DISMISSAL WITHOUT PREJUDICE**

NOW ON THIS 22nd DAY OF DECEMBER, 1987, the Petitioner, pursuant to the Federal Rules of Civil Procedure hereby dismisses this habeas corpus petition without prejudice to further raising the issues set therein before any other court of competent jurisdiction.

DATED THIS 22nd DAY OF DECEMBER, 1987.

  
THOMAS E. SALISBURY  
ATTORNEY FOR PETITIONER

*I hereby certify that I mailed a true and correct copy to all opposing counsel.*

*Thomas E. Salisbury*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TURNER METAL FAB, INC., an  
Oklahoma Corporation,

Plaintiff;

vs.

THE CONTRACTOR'S ENGINEER, INC.,  
a Kansas Corporation, and  
JERRY HOLLIDAY, individually,

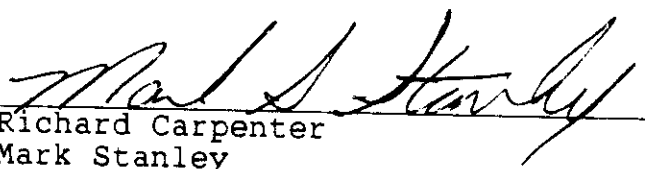
Defendants.

Case No. 86-C-721-E

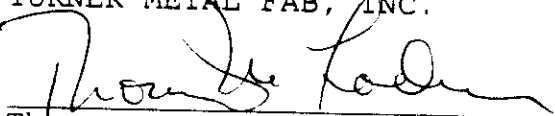
STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Turner Metal Fab, Inc. and the Defendants, Contractor's Engineer, Inc. and Jerry Holliday pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and hereby stipulate to the dismissal with prejudice of all claims raised in this action including but not limited to all claims raised by the Petition For Breach Of Contract, the Motion For Leave To Amend Complaint and Supporting Brief and the Amended Complaint, with each party to bear its own costs.

Dated this 30th day of December, 1987.

  
Richard Carpenter  
Mark Stanley  
SANDERS & CARPENTER  
205 Denver Building  
Tulsa, Oklahoma 74119

ATTORNEYS FOR PLAINTIFF,  
TURNER METAL FAB, INC.

  
Thomas M. Ladner  
HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

ATTORNEY FOR DEFENDANTS,  
THE CONTRACTOR'S ENGINEER and  
JERRY HOLLIDAY

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 31 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

BURNS W. DAVIS,

Plaintiff,

v.

GENERAL ELECTRIC MORTGAGE  
INSURANCE CORPORATION,

Defendant.

No. 85-C-788-E

ORDER

Upon the stipulation of the parties and for good cause shown, it is hereby ordered that the above-entitled cause of action be and hereby is dismissed with prejudice, each party to bear its own costs incurred to date.

ENTERED this 31<sup>st</sup> day of December, 1987.

S/ JAMES O. ELLISON

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED:



James F. Bullock  
PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR  
ONEOK Plaza, Ninth Floor  
100 West 5th Street  
Tulsa, Oklahoma 74103  
(918) 584-4136

ATTORNEYS FOR PLAINTIFF

*Stephen R. Stephens*  
for Margaret McMorrow-Ilove  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(405) 232-0621

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

WEBB SERVICES, INC.,

Plaintiff

vs.

SHAPIRO OIL & GAS, INC. et al

Defendants

vs.

CIVIL ACTION NO. 87-C-921 C

BELDON ENERGY, INC., a  
California Corporation, et al

Additional Party Defendants

HALLIBUTRON COMPANY

Intervenor and Additional  
Plaintiff

vs.

RONNIE ASHFORD, et al

Additional Defendants,

and

BELDON ENERGY, INC., a Texas  
Corporation

Additional Defendant.

AGREED ORDER FOR REMAND

On this day, came on for consideration, the motion of Halliburton Company ("Halliburton"), to remand this cause to the State Court. Beldon Energy, Inc., a Texas Corporation, which filed the petition for removal, agrees to remand, pursuant to the stipulations set forth herein.

It is stipulated and agreed that the principal place of business of Halliburton is Dallas, Texas and therefore this Court lacks jurisdiction based on diversity of citizenship of the claims and causes of action between Halliburton and Beldon.

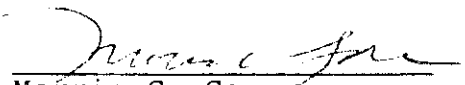
It is further stipulated and agreed that Beldon had a reasonable basis for its assertion that the principal place of business of Halliburton was Duncan, Oklahoma.

It is therefore ORDERED that this cause be and is hereby remanded to the State Court. Cost are taxed against the party incurring same. After payment of costs incurred herein by Beldon, the clerk is ORDERED to return to Beldon the five hundred dollar (\$500.00) cash bond which it deposited as its bond for removal.

SIGNED this 29<sup>th</sup> day of December 1987.

  
JUDGE PRESIDING

STIPULATED AND AGREED:

  
Morris C. Gore  
ATTORNEY FOR BELDON ENERGY,  
INC., a Texas Corporation

  
Bryan S. Gaskill  
ATTORNEY FOR HALLIBURTON CO.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 87-C-447 C

One (1) Model 4971-1651'-1000 GPM Valley System;

- One (1) Stop-n-Slot; Auto End Gun  
Shut-Off and Running Light  
C.D.S. Nozzles; Pressure  
Regulators and a 100 End Gun;
- One (1) 15 KW Generator and One (1)  
Disconnect;
- One (1) F6L912 Deutz Engine;
- One (1) Pump and Gearhead Mount  
Generator and Engine Stand;
- One (1) Pivot with Riser and One (1)  
Check Valve.

4. Defendants are in default under the terms of the Equipment Lease, and pursuant to Paragraph 21 thereto, there is due and owing to plaintiff, as Liquidated Damages, the sum of the following:

- a) Two (2) past due rentals in the aggregate amount of \$19,337.20, which accrue interest at the rate of 15% per annum from October 28, 1986 until paid;
- b) The amount of \$6,466.00 which equals 10% of the total cost of said equipment; and
- c) Two (2) remaining unpaid rentals in the aggregate amount of \$19,337.20.

5. By reason of defendants' default, plaintiff is further entitled to possession and sale or other disposition of said equipment as provided in the Equipment Lease.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that judgment be entered in favor of plaintiff, Trans Union Leasing Corporation, and against defendants, Jerry Evatt and Carol Evatt, for possession of the above-described equipment, for the sale of said equipment as provided in the Equipment Lease, and for a deficiency judgment for

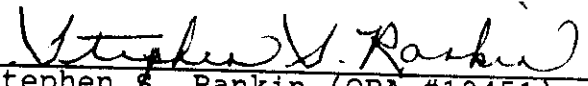
Liquidated Damages as set forth above and in the Equipment Lease. The Court retains jurisdiction to determine the amount of the deficiency after sale or other disposition.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1987.

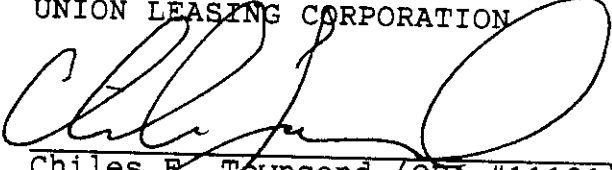
s/H. DALE COOK

H. DALE COOK  
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:

  
Stephen S. Rankin (OBA #10451)  
ENGLISH, JONES & FAULKNER  
1700 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-1564

ATTORNEYS FOR PLAINTIFF TRANS  
UNION LEASING CORPORATION

  
Chiles E. Townsend (OBA #11181)  
HOLMES & TOWNSEND  
P.O. Box 750  
Ponca City, Oklahoma 74602  
(405) 765-6723

ATTORNEYS FOR DEFENDANTS JERRY EVATT  
AND CAROL EVATT



Trans Union Leasing Corporation  
An Affiliate of Trans Union Corporation  
111 West Jackson Boulevard Chicago, Illinois 60604  
Area Code (312) 431-3368

V-V1844  
LEASE NUMBER

LESSEE NAME AND ADDRESS		DEALER NAME AND ADDRESS	
Jerry Evatt		Merveldt Irrigation Co., Inc.	
Route 1		P.O. Box 1014	
Baldon, OK 74650		El Reno, OK 73036	
910 405-738-4438			
TYPE OF ORGANIZATION	PERSON TO CONTACT	DEALER REPRESENTATIVE	LEASE PLAN REFERENCE NUMBER
<input type="checkbox"/> CORPORATION <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> PROPRIETORSHIP	Jerry Evatt	Don Rose	10-A-12
QUANTITY	DESCRIPTION OF EQUIPMENT LEASED		COST
One	Model 4971 - 1651' - 1000 GPM Valley System		\$42,025.00
One	Stop-n-Slot; Auto End Gun Shut-Off and Running Light		485.00
	C.D.S. Nozzles; Pressure Regulators and a 100 End Gun		1,518.00
One	15 KW Generator and One Disconnect		2,340.00
One	F6L912 Deutz Engine		7,646.00
One	Pump and Gearhead		6,250.00
	Mount Generator and Engine Stand		300.00
One	Pivot w/Riser and One Check Valve		560.00
	Freight and Installation		2,750.00
	Discount		(2,874.00)
	Insurance at \$.60 on \$61,000.00		3,660.00
TERMS OF LEASE	STARTING DATE	INITIAL LEASE TERM IN MONTHS	SECURITY DEPOSIT
MO 3 DAY 27 YEAR 80		120 months	\$ NONE
RENTAL PAYMENT NO 2 FOR \$ 9,668.60	RENTAL PAYMENTS NO 3 TO 120 FOR \$ 9,668.60		TOTAL COST \$64,660.00
DUE 3 12 1981	DUE EVERY 12 MONTHS		CALENDAR PERIOD: THEREAFTER BEGINNING 3 12 1981
LOCATION OF EQUIPMENT:			

#### TERMS AND CONDITIONS OF LEASE

1. LEASE. Subject to the terms hereof, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the equipment and other property described above and in any attachment hereto ("Equipment").
2. TERM. The initial term of this Lease shall commence on the Starting Date set forth above and, subject to the terms hereof, shall continue until the expiration of the number of months set forth above. If the starting date is not stated above it shall be conclusively presumed to be the date of installation of the equipment; and Lessee in such case authorizes Lessor to at any time insert such date hereon, and to at any time insert hereon as the due date of Rental Payment No. 2 and succeeding Rental Payments the same day of each succeeding Calendar Period specified above.
3. RENTALS. As rental for the Equipment, Lessee hereby agrees to pay to Lessor: (a) the First Payment indicated above concurrently with the execution of this Lease by Lessee; (b) Rental Payment No. 2 in the amount and on the date indicated above; and (c) thereafter in advance on the same day of each Calendar Period specified above, the Rental Payments indicated above. All rentals shall be paid without notice or demand and without abatement, deduction or setoff of any amount for any reason whatsoever. All such rentals shall be paid to Lessor at 111 W. Jackson Blvd., Chicago, Illinois 60604, or at such other address as Lessor may specify by notice to Lessee. If any rentals or other sums due hereunder are not paid within 5 days of the due date thereof, Lessee shall pay to Lessor on demand, as additional rental, interest thereon from the due date until payment at a rate equal to the lesser of (i) 15% per annum or (ii) the maximum rate permitted by law.
4. DISCLAIMER OF WARRANTIES. LESSEE ACKNOWLEDGES THAT (i) THE EQUIPMENT IS A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE; (ii) LESSOR IS NOT A MANUFACTURER THEREOF NOR A DEALER IN PROPERTY OF SUCH KIND; (iii) NEITHER THE DEALER NAMED ABOVE NOR ANY REPRESENTATIVE OF SUCH DEALER OR ANY MANUFACTURER OF THE EQUIPMENT IS AN AGENT OF LESSOR OR AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE; AND (iv) LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT. No defect in, unfitness of or inability of Lessee to use any Equipment, howsoever caused, shall relieve Lessee from its obligation to pay rentals hereunder or from any other obligation of Lessee hereunder. Lessor shall not in any event be responsible to Lessee for any damages, direct, consequential or otherwise, resulting from the delivery, installation, use, operation, performance or condition of any Equipment, or any delay or failure by the Dealer in delivering and/or installing any Equipment or performing any service for Lessee. Nothing herein shall be construed as depriving Lessee of whatever rights Lessee may have against the Dealer or any manufacturer of the Equipment. TO THE EXTENT ASSIGNABLE, LESSOR HEREBY ASSIGNS TO LESSEE DURING THE TERM OF THIS LEASE, AND LESSEE HEREBY ACCEPTS, ANY AND ALL DEALERS' AND MANUFACTURERS' WARRANTIES WITH RESPECT TO THE EQUIPMENT; AND TO THE EXTENT NOT ASSIGNABLE, LESSOR AUTHORIZES LESSEE, AT LESSEE'S EXPENSE, TO ASSERT FOR LESSOR'S ACCOUNT DURING THE TERM HEREOF ALL OF LESSOR'S RIGHTS WITH RESPECT TO SUCH WARRANTIES. COPIES OF ANY SUCH WRITTEN WARRANTIES WILL, IF AVAILABLE TO LESSOR, BE FURNISHED TO LESSEE UPON REQUEST.
5. ACCEPTANCE. Lessee shall inspect each item of Equipment within 72 hours after installation thereof. Unless Lessee within said period of time gives written notice to Lessor and the Dealer specifying any defect in or other proper objection to such Equipment, it shall be conclusively presumed between Lessor and Lessee that Lessee has fully inspected such Equipment, that such Equipment is in full compliance with the terms of this Lease, that such Equipment is in good condition (operating and otherwise) and repair, and that Lessee has accepted such Equipment as of the date of such installation. Forthwith after acceptance of each item of Equipment, Lessee shall execute and deliver to Lessor, Lessor's form of Delivery and Acceptance Acknowledgement.

DO NOT WRITE IN THIS AREA		
MO	DAY	YEAR
DATED		19
ACCEPTED AT CHICAGO, ILLINOIS		
TRANS UNION LEASING CORPORATION, LESSOR		
BY	TITLE	

THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE		
MO	DAY	YEAR
DATED		19
LESSEE	✓ Jerry Evatt	
BY	✓ Don Rose	
	TITLE	
BY	TITLE	

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE

[illegible]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SKZ, INC.,

Plaintiff,

-vs-

WHITMAR EXPLORATION COMPANY,

Defendant.

No. 87-C-502-C

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, SKZ, Inc. (now known as Zilkha Energy Company) and Whitmar Exploration Company stipulate to the dismissal of the captioned case.

REYNOLDS, RIDINGS & HARGIS

By

Ross A. Pleurde

Attorneys for SKZ, Inc.

2808 First National Center

Oklahoma City, Okla. 73102

405/232-8131

GABLE & GOTWALS

By

John R. Barker

Attorneys for Whitmar

Exploration Company

2000 Fourth National Bank

Building

Tulsa, Oklahoma 74119

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

DAVID W. RUMFELDT and  
GROUTING SERVICES, INC.,

Defendants.

No. 86-C-884-C

J U D G M E N T

This matter came on for consideration of the motion of the plaintiff for partial summary judgment and the motion of the defendants for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed on December 24, 1987,

IT IS THEREFORE ORDERED AND ADJUDGED that judgment is hereby entered for defendants David W. Rumfeldt and Grouting Services, Inc., and against the plaintiff United States of America, and that plaintiff take nothing by way of this action.

IT IS SO ORDERED this 29<sup>th</sup> day of December, 1987.

  
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCCIDENTAL FIRE & CASUALTY  
COMPANY OF NORTH CAROLINA,  
a foreign corporation,

Plaintiff,

vs.

THE MAYFAIR OPERATING COMPANY,  
INC., an Oklahoma corporation,  
et al.,

Defendants.

No. 86-C-653-C

O R D E R

Now before the Court for its consideration is the motion of certain defendants to dismiss.

This matter is a declaratory judgment action brought by plaintiff to determine whether coverage exists under a policy issued by plaintiff to defendant Mayfair Operating Company. The issue became the subject of an existing concrete controversy when certain defendants herein were sued in state court by certain other defendants herein for damages. The Court is now advised that the state court action has been dismissed without prejudice for failure to prosecute. Despite this, the plaintiff herein opposes dismissal and seeks a determination of its rights. It is well settled that:

The Declaratory Judgment Act applies only in "a case of actual controversy," 28 U.S.C. §2201, and there is no actual controversy if




a matter has become moot. Moreover, there must be a controversy at the time the court acts.

Scherer v. Davis, 543 F.Supp. 4, 20 (N.D.Fla. 1981), (citations omitted). Because no actual controversy presently exists between the parties, this action must be dismissed.

It is the Order of the Court that the motion of the defendant to dismiss is hereby GRANTED, and that this action is dismissed without prejudice.

IT IS SO ORDERED this <sup>29</sup>29 day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

W. F. MARTIN, an individual,

Defendant and  
Counter-Plaintiff,

STEPHEN C. SIMS, an individual,  
and FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for  
First National Bank of Sapulpa,  
a national banking corporation,

Counter-Defendants.

Case No. 87-C-244-B

JOURNAL ENTRY OF JUDGMENT

Now on this 29<sup>th</sup> day of December, 1987, the above entitled cause comes on before me, and Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity, ("FDIC") appearing by and through its attorneys of record, Boesche, McDermott & Eskridge, and Defendant W.F. Martin, an individual, appearing by and through his attorney of record, R. Jack Freeman, Esq., and the Court being fully advised in the premises finds as follows:

1. On August 27, 1986, an action was commenced by First National Bank of Sapulpa, a national banking association (the "Bank"), against W.F. Martin, in the District Court for Tulsa County, Oklahoma, styled: First National Bank of Sapulpa, Plaintiff, v. W.F. Martin, Defendant, Case No. CJ-86-05496. The

action was subsequently dismissed without prejudice. On September 29, 1986, the action was refiled in the District Court in and for Creek County, Oklahoma, Sapulpa Division, as Case No. C-86-579 (the "State Court Action.")

2. On March 5, 1987, the United States Comptroller for the Currency declared the Bank insolvent and appointed Federal Deposit Insurance Corporation as receiver for the Bank (the "Receiver").

3. On April 6, 1987, the Receiver filed its Petition for Removal of the State Court Action, in the United States District Court for the Northern District of Oklahoma and the State Court Action henceforth became the present action.

4. By this Court's order of May 27, 1987, Federal Deposit Insurance Corporation, in its corporate capacity, was substituted as the proper party plaintiff in this action.

5. This action is one of which the Court has original jurisdiction pursuant to the provisions of 12 U.S.C. §1819(4) and was properly removed pursuant to 28 U.S.C. §1441(a).

6. All parties are properly before the Court as Defendant W.F. Martin ("Martin") was properly served with summons and thereafter filed his answer.

7. On or about October 28, 1985, Defendant Martin made, executed and delivered to the Bank his certain promissory note in the original principal amount of \$20,212.14, together with interest thereon to accrue until paid at the Bank's floating prime rate, which at said time was, and continues to be 14.5% (the "Note").

8. Although demand has been made, Defendant Martin has failed and refused and continues to fail and refuse to pay the amount due and owing pursuant to the terms of the Note and as a result is in default thereunder. As of December 21, 1987, there was due and owing under the terms of the Note the principal sum of \$20,053.84, plus accrued interest in the sum of \$7,584.57, plus interest accruing from and after said date at the rate of \$10.71 per diem until judgment is entered.

9. Defendant Martin alleges, as a defense to his obligation to repay the Note, that his obligation to repay the Note was conditioned upon his continued employment by the Bank, which employment was terminated. This defense has no merit as against the Federal Deposit Insurance Corporation, in its corporate capacity, pursuant to the federal common law set forth in D'Oench Duhme & Co. v. FDIC, 315 U.S. 447 (1942) and pursuant to Tit. 12 U.S.C. §1823(e). The Bank's records contain no writing, signed by the Bank and Defendant Martin, which has been approved by the Bank's board of directors or loan committee and is so reflected in the minutes of the board or committee, and which exists as an official record of the bank from its inception up to and including the present, and which sets forth any agreement between W.F. Martin and the Bank, conditioning Mr. Martin's liability on the Note upon his continued employment by the Bank.

10. Judgment should be entered in favor of FDIC and against Defendant Martin on the Note for the principal sum of \$20,053.84, plus accrued interest in the sum of \$7,584.57, plus interest accruing from and after the 21st day of December, 1987, to date

of judgment at the rate of \$10.71 per diem, plus interest on the total from and after date of judgment until paid in full at the maximum rate provided by law.

11. Judgment also should be entered in favor of FDIC and against Defendant Martin awarding FDIC all of its costs and expenses accruing herein, together with attorney fees in the amount of 15% of all sums due, pursuant to the express terms of the Note, the amount of said fees and costs to be specifically determined following submission of a bill of costs and an application for attorney fees to this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the allegations in Plaintiff's Petition generally are found to be true and correct and that the defense alleged by Defendant Martin is not a viable defense to the relief sought and awarded to FDIC in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity, and against Defendant W.F. Martin for the principal sum of \$20,053.84, plus accrued interest in the sum of \$7,584.57, plus interest accruing from and after the 21st day of December, 1987 to date of this judgment at the rate of \$10.71 per diem, plus interest on the total from the date of this judgment until paid in full at the rate of 7.22 per annum.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and hereby is entered in favor of Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity, and against

Defendant W.F. Martin for all of Federal Deposit Insurance Corporation's costs and expenses incurred herein, together with an attorney's fee, the amounts of which will be determined upon proper application for both.

IT IS SO ORDERED.

  
United States District Judge

Bradley K. Beasley  
Leslie Zieren  
BOESCHE, McDERMOTT & ESKRIDGE  
800 ONEOK Plaza  
100 West Fifth Street  
Tulsa, OK 74103  
(918) 583-1777

ATTORNEYS FOR PLAINTIFF  
FEDERAL DEPOSIT INSURANCE CORPORATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 30 1987 *hmv*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

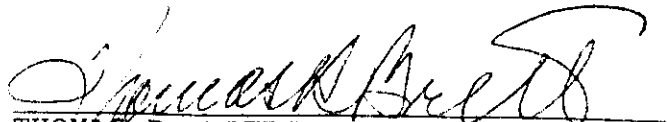
BALBOA INSURANCE COMPANY, )  
a California corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MURPHY ENTERPRISES, INC., )  
d/b/a MURPHY BROTHERS )  
EXPOSITIONS, a Nebraska )  
corporation, )  
 )  
Defendant. )

No. 87-C-194-B✓

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby granted in favor of the plaintiff, Balboa Insurance Company, and against the defendant, Murphy Enterprises, Inc., d/b/a Murphy Brothers Expositions, a Nebraska corporation, and the Court hereby declares there is no obligation on the part of Balboa Insurance Company to defend or pay a judgment in the case of James A. Rhoades, Plaintiff, v. Murphy Enterprises, Inc., d/b/a Murphy Brothers Expositions, Defendant, Case No. CJ-86-05434 in the District Court of Tulsa County, Oklahoma; costs are hereby assessed against the defendant.

DATED this 30th day of December, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HARRY CHEATWOOD, Personal )  
Representative of the )  
Estate of PAULINE THOMAS, )  
Deceased, )

Plaintiff, )

vs. )

Case No. 87-C-923 B

PROTECTIVE CASUALTY )  
INSURANCE COMPANY, a )  
Missouri corporation, MYERS )  
GRAIN AND FERTILIZER, INC., )  
a Texas corporation, BILLIE )  
JAKE MYERS, individually, )  
BILLIE JAKE MYERS, d/b/a )  
RAS, BILLIE JAKE MYERS, )  
d/b/a RHINELAND AGRI )  
SHIPPERS, R.A.S. TRUCKING, )  
INC., a Texas corporation, )  
DAVID LOREN UNDERWOOD and )  
BRENDA LEE GORDON, Personal )  
Representatives of the Estate )  
of PHYLLIS ROSE UNDERWOOD, )  
deceased, DAVID LOREN )  
UNDERWOOD, individually, )  
and BRENDA LEE GORDON, )  
individually, CHARLES )  
OVERGARD, Personal )  
Representative of the )  
Estate of ELIZABETH ANN )  
OVERGARD, deceased, CHARLES )  
OVERGARD, individually, )  
MILDRED REYNOLDS, MYRTLE )  
MORGAN, and VERA TRESLER, )

Defendants. )

ORDER TO DISMISS WITHOUT PREJUDICE  
DEFENDANT BRENDA LEE GORDON,  
INDIVIDUALLY AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
PHYLLIS ROSE UNDERWOOD, DECEASED

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Brenda  
Lee Gordon, individually and as Personal Representative of

FILED  
DEC 30 1987  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT



the Estate of Phyllis Rose Underwood, deceased, is dismissed from this action without prejudice against the Plaintiff, Harry Cheatwood, Personal Representative of the Estate of Pauline Thomas, deceased, to file another action against said Defendant.

S/ THOMAS R. BRETT

JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 29 1987

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

SHELTER MUTUAL INSURANCE COMPANY, )  
an Illinois insurance corporation, )  
Plaintiff, )  
v. )  
LINDA SUE JONES and )  
BRENT DOUGLAS TURNEY, )  
Defendants. )

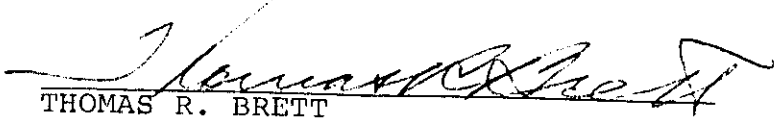
No. 87-C-750-B

O R D E R

This matter comes before the Court on Defendant Linda Sue Jones' motion to dismiss pursuant to Fed.R.Civ.P. 12(b). Defendant contends diversity of citizenship has not been properly plead.

The Complaint filed by Shelter Mutual Insurance Company alleges where Defendants reside but does not allege citizenship. This case is dismissed without prejudice for failure to properly allege the jurisdiction of this Court. Whitelock v. Leatherman, 460 F.2d 507 (10th Cir. 1972).

IT IS SO ORDERED, this 28 day of dec, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALECO, LTD. 1982-A, a Colorado  
Limited Partnership, and ALECO  
PRODUCTION COMPANY, a Delaware  
corporation,

Plaintiffs,

v.

SCW INVESTMENT GROUP, a Florida  
general partnership, JOHNSON S.  
SAVARY, ROBERT J. CARR, and  
PHILLIP A. WOLFE, individually  
and as general partners of SCW  
INVESTMENT GROUP,

Defendants.

No. 87-C-591-B

**FILED**

**DEC 29 1987**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

O R D E R

This matter comes before the Court on Defendants' motion to dismiss or in the alternative to change venue. Defendants contend the Court lacks in personam jurisdiction over the Defendants. The precise issue before the Court today is: Does this Court under the facts disclosed in the record herein, have in personam jurisdiction over a nonresident (Florida) limited partner which is being sued for the amount of the agreed original investment in a Colorado limited partnership whose principal place of business is in Oklahoma. As reflected by the following analysis, upon review of the facts herein, the limited partner's involvement in the State of Oklahoma is insufficient to confer personal jurisdiction over it.

Aleco, Ltd. 1982-A (Colorado limited partnership) and Aleco Production Company (Delaware general partner of the Colorado

limited partnership) are suing SCW Investment Group (the Florida limited partner of the Colorado limited partnership) for the balance of the Florida limited partner's original capital contribution (approximately \$47,000.00).<sup>1</sup>

The partnership agreement between the Colorado limited partnership and the Florida limited partner allowed the Florida limited partner to pay its original subscription partly in cash and partly through the delivery of an assumption agreement in favor of the Colorado limited partnership's lender, secured by a letter of credit. The Florida limited partner did sign an assumption agreement in favor of First National Bank and Trust Company of Tulsa (the Oklahoma bank) and assumed primary liability for its proportionate share of the Colorado limited partnership debt to the Oklahoma bank. The Florida limited partner also supplied a letter of credit to the Oklahoma bank. However, this letter of credit expired and was not renewed or extended and therefore this lawsuit ensued for breach of the Subscription Agreement.

The Florida limited partner contends this Court lacks personal jurisdiction over it. Defendants<sup>2</sup> were solicited in Florida by a Florida E. F. Hutton stockbroker. Defendants state they never came to Oklahoma concerning this investment. The

<sup>1</sup> SCW Investment Group is a general partnership. Plaintiffs also are suing the general partners of the SCW Investment Group. However, Defendants concede if SCW Investment Group is subject to the Court's jurisdiction, so are the individual partners of SCW.

<sup>2</sup> The individual general partners of the Florida limited partner, SCW.

Florida limited partner contends it was a passive investor in a Colorado limited partnership. The Subscription Agreement for the limited partnership was executed in Florida, and sent to E. F. Hutton in Florida along with the initial investment checks.<sup>3</sup> None of the negotiations concerning the investment were made with any of the general partners in Oklahoma; all contacts were with the Florida E. F. Hutton office. The Florida limited partner states it has no business in Oklahoma, no office or telephone listing, and does not advertise or solicit business in Oklahoma.

The party invoking the jurisdiction of the court has the burden of proving the existence of jurisdiction. Wilshire Oil Co. v. Riffe, 409 F.2d 1277 (10th Cir. 1969).

Plaintiffs, the Colorado limited partnership and the Delaware general partner, contend the Florida limited partner does have minimum contacts with Oklahoma. First, they point out Defendant became a limited partner in a partnership whose principal offices were in Oklahoma. However, the Subscription Agreement does not state the principal office would be in Oklahoma. The Subscription Agreement does specify that the agreement is to be governed and construed by the laws of the State of Colorado.<sup>4</sup> There is no evidence before the Court that Defendant was aware prior to investing that the principal office would be in Oklahoma. Plaintiffs also argue the oil and

<sup>3</sup> Defendants also arranged with a Florida bank for the letter of credit in favor of the Oklahoma bank.

<sup>4</sup> The Court recognizes that this clause is not dispositive of whether personal jurisdiction exists.

gas investments made by the limited partnership were substantially all in Oklahoma. Again, there is no evidence the Florida limited partner was aware of where those investments would be made. Jurisdiction over a nonresident must affirmatively appear from the record; it cannot be inferred. Union Bank v. Ferris, 587 P.2d 454 (Okla. 1978). More importantly, as a limited partner it had no management input to make these decisions connecting the Colorado limited partnership to Oklahoma.<sup>5</sup>

Plaintiffs further maintain the Assumption Agreement<sup>6</sup> contract signed with an Oklahoma bank and the letter of credit to the Oklahoma bank provide sufficient minimum contacts with the State of Oklahoma for personal jurisdiction. The Court has reviewed extensively the cases on the issue of what contractual relationships justify minimum contacts. The Court is convinced personal jurisdiction does not lie in the present action.

12 O.S. §2004(f) provides:

"A court of this state may exercise jurisdiction on any basis consistent with the Constitution of the state and the Constitution of the United States."

The United States Supreme Court held that before jurisdiction can be exercised, the Due Process Clause of the

5 Restrictions are placed upon the activities of limited partners in return for releasing those partners from individual liability on debts of the enterprise beyond a liquidated amount. Limited partners must refrain from any participation in the management of the business. Reuschlein and Gregory, Agency and Partnership, June 1980.

6 Assumption Agreement specifies it is to be governed by Oklahoma law.

Fourteenth Amendment requires minimum contacts between the state exercising personal jurisdiction and the defendant. International Shoe Co. v. State of Washington, et al., 326 U.S. 310, 90 L.Ed. 95 (1945).

It is critical to due process that "defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980); Burger King v. Rudzewicz, 471 U.S. 462 (1985).

A minimum contacts inquiry must focus on the totality of the relationship between the Defendant and the forum state. Colwell v. Triple T, 785 F.2d 1330 (5th Cir. 1986); All American Car Wash v. NPE, 550 F.Supp. 166 (W.D. Okl. 1981). "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." Hanson v. Denckla, 357 U.S. 235 (1958).

Further, contracting with an out-of-state party alone cannot automatically "establish sufficient minimum contacts in the other party's home forum." Burger King v. Rudzewicz, 471 U.S. 462 (1985). Surely, mere payment of money into a jurisdiction is not sufficient to confer personal jurisdiction. Rosenthal & Co. v. Dodick, 365 F.Supp. 847 (N.D.Ill. 1973).

The court must ask were the activities carried on in the forum "irregular" or were they "continuous throughout the years." International Shoe Co. v. Washington, 326 U.S. 310 (1945; CMI v. Costello, 454 F.Supp. 497 (W.D.Okla. 1977)). In looking at the

quality and nature of the activity of the Florida limited partner in the present case, we conclude the relationship was not "substantial," "continuous" and "regular" but was "isolated" and "irregular."

A recent United States Supreme Court case concerning in personam jurisdiction specifies the factors to consider which are "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Burger King v. Rudzewicz, 471 U.S. 462 (1985). As stated previously, all prior negotiations in the present case took place in Florida, contemplated future consequences were not in the control of the defendant as a limited partner, the terms of the contract specified Colorado law,<sup>7</sup> and the parties had no actual course of dealing but through a Florida broker.

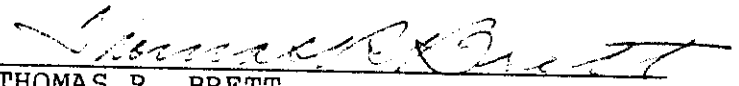
In Burger King v. Rudzewicz, 471 U.S. 462 (1985), footnote 22, the United States Supreme Court notes Defendant Rudzewicz was a primary participant in the enterprise. This is not the case herein. Defendant limited partner is by definition a passive investor. Therefore, the Court adopts Defendant's argument that this case is analogous to the passive purchaser cases. A nonresident passive purchaser may not be haled into Court unlike the soliciting seller. Jem Engineering v. Toomer Electrical, 413 F.Supp. 481 (N.D.Okla. 1976); Misco Leasing, Inc. v. Vaughn, 450 F.2d 257 (10th Cir. 1971).

<sup>7</sup> Choice of law provisions should not "be ignored in considering whether a defendant has 'purposefully invoked the benefits and protections of a state's law' ..." Burger King v. Rudzewicz, 471 U.S. 462, 482 (1985).



The exercise of long-arm jurisdiction in the present case offends traditional notions of fair play and substantial justice. Burger King v. Rudzewicz, 471 U.S. 462 (1985). Therefore, the case is dismissed for want of in personam jurisdiction over the Defendants.

IT IS SO ORDERED, this 29<sup>th</sup> day of Dec., 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 30

PURL GREGORY,

Plaintiff,

v.

GREYHOUND LINES CORPORATION,

Defendant.

No. 87-C-282-C

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 29 day of Dec, 1987, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARGARET LOUISE PONTIOUS, )

Plaintiff, )

v. )

No. 87-C-479-B

DARIEN SEXTON and RICHARD )  
SEXTON, individually and as )  
father and next friend of )  
DARIEN SEXTON, )

Defendants. )

**FILED**

**DEC 29 1987**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

O R D E R

This matter comes before the Court on Defendants Darien Sexton's and Richard Sexton's motion to dismiss. Defendants contend this Court lacks personal jurisdiction. The Court agrees.

Plaintiff, a resident of the State of Oklahoma, was involved in an automobile accident in Kansas with Defendant Darien Sexton, a Kansas resident. Plaintiff sued Darien Sexton for negligence and also his father, Richard Sexton, a Kansas resident, for negligent entrustment of his automobile.

The Due Process Clause protects an individual from being subject to binding judgments in a forum where he has established no meaningful contacts. International Shoe Co. v. Washington, 326 U.S. 310 (1945). In the present case, Plaintiff has not alleged any facts which would show the Court Defendants have any minimum contacts with Oklahoma. The accident occurred in Kansas and Defendants reside in Kansas and process was served

there. Defendants had no reason to anticipate being haled into Court in Oklahoma. World-Wide Volkswagen Co. v. Woodson, 444 U.S. 286 (1980). Therefore, this case is dismissed without prejudice.

IT IS SO ORDERED, this 29 day of Dec, 1987.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SAMUEL TRIMIAR,  
Plaintiff,

v.

KARL G. GOOLSBAY, PATRICK  
DUNLAP, BRADLEY EBY, and  
THE CITY OF TULSA, a muni-  
cipal corporation,  
Defendants.

No. 87-C-665-B

**FILED**  
DEC 29 1987  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Defendant Karl G. Goolsbay's motion to dismiss the claims against him. Defendant Goolsbay states Plaintiff has failed to state a claim against him for which relief can be granted. Defendant also requests an award of attorney fees for the defense of the action. It was announced at the status conference held December 10, 1987, Defendant City of Tulsa's motion to dismiss is moot.

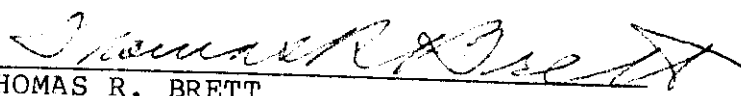
Plaintiff was accused of illegally dumping trash across from the church where he is pastor. Tulsa police later arrested Plaintiff for refusing to obey officers' orders. Plaintiff sues the City of Tulsa and Karl G. Goolsbay, the citizen who originally reported the dumping to the police, under 42 U.S.C. §1983.

To effectively plead a cause of action under 42 U.S.C. §1983, Plaintiff must claim (1) the deprivation of rights secured by the Constitution, and (2) the person depriving was acting

under color of law. Gomez v. Toledo, 446 U.S. 635 (1980). "The unilateral action by a private person of filing a sworn complaint for an arrest warrant of another person suspected to have committed a crime does not constitute state action or action under color of state law." See, Lee v. Patel, 564 F.Supp. 755 (E.D.Va. 1983). Plaintiff must allege a conspiracy between Goolsbay and the arresting officers. Mark v. Furay, 769 F.2d 1266 (7th Cir. 1985).

The complaint fails to allege any conspiracy between Defendant Goolsbay and the arresting officer. Plaintiff's claims against Defendant Goolsbay must be dismissed without prejudice for failure to state a claim upon which relief can be granted. The request for attorney's fee is denied.

IT IS SO ORDERED, this 27 day of dec, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Plaintiff,

JIM PAYNE; and JIM PAYNE  
OLDS-PONTIAC, INC.,

87-C-583-B

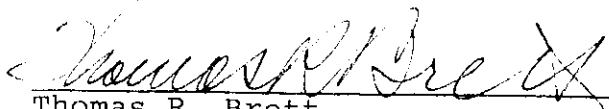
(Agreed)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Federal Deposit Insurance Corporation, recover from Defendants Jim Payne and/or Jim Payne Olds-Pontiac, Inc., the sum of \$5,841.84 with interest thereon from June 4, 1987, at the rate specified in 28 U.S.C. §1961 until paid, and its costs of action. Additionally, as provided for in the Note, the FDIC is entitled to an award of attorney's fees of 15% of the sums due. Therefore, the FDIC is entitled to recover the amount of \$876.27 in attorney's fees.

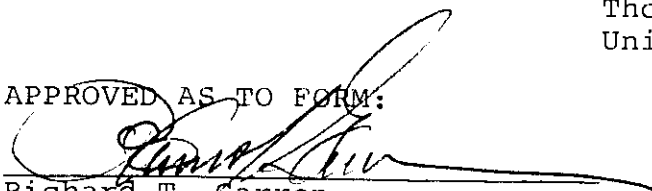
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Federal Deposit Insurance Corporation, recover from the Defendant, Jim Payne Olds-Pontiac, Inc., the sum of \$277,256.93, plus interest accrued and accruing from June 4, 1987, at the rate specified in 28 U.S.C. §1961 until paid, and its costs of action. Additionally, pursuant to the terms of the Note, the FDIC is entitled to recover the amount of \$4,159.09 as an award of attorney's fees.

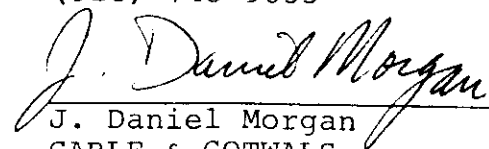
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Federal Deposit Insurance Corporation, recover from the Defendant, Jim Payne, the sum of \$5,765.60, with interest accrued and accruing from June 4, 1987, at the rate specified in 28 U.S.C. §1961 until paid, and its costs of action. Additionally, the FDIC is entitled to recover the amount of \$864.84 as an award of attorney's fees pursuant to the terms of the Note.

SO ORDERED this 28 day of December, 1987.

  
Thomas R. Brett  
United States District Judge

APPROVED AS TO FORM:

  
Richard T. Garren  
P. O. Box 52400  
Tulsa, Oklahoma 74152  
(918) 743-9633

  
J. Daniel Morgan  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119  
(918) 582-9201



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BURLINGTON NORTHERN RAILROAD  
COMPANY, a corporation,

Plaintiff,

vs.

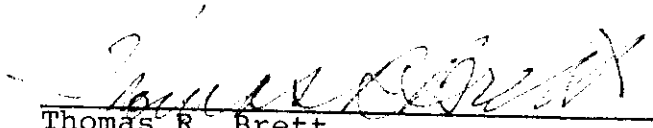
KARL D. JONES, Special  
Administrator of the Estate of  
Joe Ervin Epperson, Deceased,  
Individually and d/b/a Epperson  
Hauling and/or Epperson Trucking;  
PROGRESSIVE CASUALTY INSURANCE  
COMPANY, a corporation; VINITA  
ROCK COMPANY, a corporation;  
FEDERATED MUTUAL INSURANCE  
COMPANY, a corporation; and  
WESTERN ENGINEERING COMPANY, INC.,  
a corporation,

Defendants.


Case No. 87-C-568-B

ORDER

Upon application of plaintiff and defendants Vinita Rock Company and Federated Mutual Insurance Company, it is hereby ordered that Vinita Rock Company and Federated Mutual Insurance Company are hereby dismissed.

  
Thomas R. Brett  
United States District Judge

Approved:

  
John A. Mackechnie  
Attorney Plaintiff, Burlington  
Northern Railroad Company

87-3157TN/113

23



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Coy D. Morrow  
Attorney for Defendants, Vinita  
Rock Company and Federated Mutual  
Insurance Company

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 28 1987

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

WILLIAM HUMPHREY,

Plaintiff,

v.

87-C-484-C

LUSY CREEKMORE, TULSA COUNTY,  
D. L. MEYER, FRANK THURMAN,  
SHERIFF, et al,

Defendants.


ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed December 4, 1987, in which the Magistrate recommended that defendants' motion to dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that defendants' motion to dismiss is granted, and plaintiff's civil rights complaint is hereby dismissed.

Dated this 24<sup>th</sup> day of December, 1987.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 28 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

FELLOWSHIP OF CHIROPRACTIC )  
PHYSICIANS and GENE SCHUMANN, )  
D. C., )

Plaintiffs, )

vs. )

BOARD OF CHIROPRACTIC EXAMI- )  
NERS, et al., )

Defendants. )

Case No. 85-C-943-E

ORDER OF DISMISSAL

NOW on this 29<sup>th</sup> day of December, 19 87, this  
cause having come before the undersigned Judge of the District  
Court pursuant to the Stipulation of Dismissal filed on the 24th  
day of December, 1987, herein, by the Plaintiffs, and with repre-  
sentations therein of stipulation thereto by the counsel for the  
Defendants:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above  
styled and numbered cause shall be and is hereby dismissed.

S/ JAMES O. ELLISON

U. S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HAROLD GLOVER, d/b/a HAROLD GLOVER TAX  
CONSULTANT AND ACCOUNTANT,

Plaintiff,

v.

UNITED STATES FIRE INSURANCE COMPANY, a  
New York Company,

Defendant and  
Third-Party Plaintiff,

v.

REED, SMITH, & REED, INC., an Oklahoma  
corporation; BOB REED and ROBERT REED, JR.)  
individuals, as officers, and/or board  
members of REED, SMITH & REED, INC., )  
PRICE, CHEW, TUCKER INSURANCE, INC., an )  
Oklahoma corporation; PRICE & CHEW )  
INSURANCE AGENCY, INC., an Oklahoma )  
corporation; and GEORGE SMITH, individual, )

Third-Party Defendants.)

No. 87-C-281-C ✓

ORDER OF DISMISSAL WITH PREJUDICE NUNC PRO TUNC

NOW ON this 24 day of Dec, 1987, it appearing to the Court  
that the Third-Party claims against Price & Chew Insurance Agency, Inc. and Price,  
Chew, Tucker Insurance, Inc. have been compromised and settled. These Third Party  
claims are dismissed with prejudice to the refiling of a future action.

  
United States District Judge

*Entered*

FILED

DEC 28 1987

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM DAWSON and MARIAN DAWSON,

Plaintiffs,

vs.

ANTHONY BELL, a/k/a TONY BELL,  
individually and d/b/a SPINDRIFT  
YACHTS, and SPINDRIFT YACHTS  
INCORPORATED, a California  
Corporation,

Defendants.

Case No. 87-C-988E ✓

**FILED**

DEC 24 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

NOW on this 24<sup>th</sup> day of December, 1987, there comes on for consideration before me, the undersigned Judge the Motion by the Plaintiffs for Entry of Judgment, and the Court, after examination of the file, General Power of Attorney, Acknowledgment and Agreement of R. Anthony Bell, and the Stipulation of Judgment filed herein on December 16, 1987, finds the same should be entered and granted.

The Court finds it has jurisdiction of this matter pursuant to 28 U.S.C. §1332, and the amount in controversy is in excess of Ten Thousand Dollars.


The Court further finds the parties have entered into a stipulation filed herein on December 16, 1987, wherein they have agreed the actions filed by the Plaintiffs arise out of common law theories of fraud and negligence, as well as the provisions of 28 U.S.C. §2201 which the parties agree is applicable under the circumstances.

The Court further finds service and venue have been acknowledged by the Defendant, R. Anthony Bell, both individually and on behalf of the Defendant, Spindrift Yachts, Incorporated, a California Corporation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Plaintiffs, William Dawson and Marian Dawson have and recover against the Defendants, Anthony Bell, a/k/a Tony Bell, individually and d/b/a Spindrift Yachts, and Spindrift Yachts Incorporated, a California Corporation, and each of them judgment in the amount of Six Hundred Seventy-Five Thousand Dollars, (\$675,000.00), together with their costs of suit incurred herein, *post-judgment* <sup>*at the rate of 17.22 % per annum*</sup> ~~interest, as provided by law and such other relief as the Court~~ deems just, equitable and proper.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Stipulation of Judgment and attachments thereto, filed in this Court on December 16, 1987, are specifically incorporated herein by reference and are made a part of this judgment.

For all of which let execution issue as provided for by the stipulation by the parties, and, as allowed by law.

  
JUDGE OF THE DISTRICT COURT

ENTRY REQUESTED

William D. Hunt & Associates  
6863 S. Canton, Box 35502  
Tulsa, Oklahoma 74153-0502  
(918) 494-4848

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 24 1987

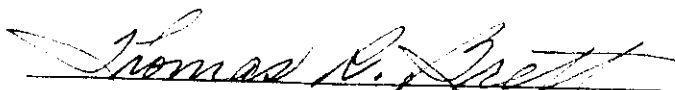
JANEEN D. GRAY and BILLY G. GRAY, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 WAL-MART STORES, INC., )  
 )  
 Defendant. )

No. 87-C-473-B

J U D G M E N T

Pursuant to the verdict of the jury rendered on December 23, 1987, finding the Plaintiff Janeen D. Gray was 95% negligent and the Defendant Wal-Mart Stores, Inc., was 5% negligent in reference to Janeen D. Gray's fall and subsequent injuries at the Cleveland, Oklahoma Wal-Mart store on January 8, 1986, and the comparative negligence law of Oklahoma, judgment is hereby entered in favor of the Defendant Wal-Mart Stores, Inc., and against the Plaintiffs, with costs to be assessed against the Plaintiffs if timely applied for pursuant to local court rule. The parties are to pay their own respective attorneys' fees.

DATED this 24<sup>th</sup> day of December, 1987.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEAN BAILEY OLDS, INC.,  
Plaintiff,

vs.

ROMAN MOTOR CORPORATION;  
JOHN TROTMAN; JAMES OMEARA,  
Defendants.

No. 87-C-311 E

**FILED**


DEC 24 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

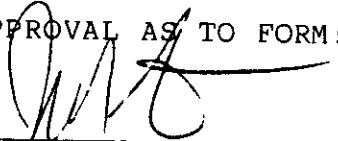
ORDER

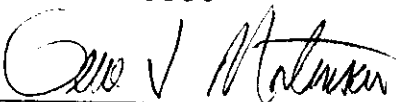
NOW ON this 24<sup>th</sup> day of December, 1987,  
this matter comes before the Court on the Report and Recommendation of the Magistrate on the Plaintiff's Motion for Summary Judgment. Having reviewed the recommendation and report of the Magistrate, the Court hereby Orders that the Plaintiff's Motion for Summary Judgment be allowed and the Judgment be entered in the amount of \$25,000.00 plus costs and prejudgment interest to run from February 16, 1987, at the rate of six percent (6%) per annum.

Plaintiff is to make any Application for Attorney Fees pursuant to local rule.

  
DISTRICT COURT JUDGE

APPROVAL AS TO FORM:

  
JOHN ROTHMAN  
Attorney for Plaintiff  
4402 E. 67th St.; Suite 5B  
Tulsa, OK 74136  
918-272-5338

  
GENE L. MORTENSEN  
Attorney for Defendants  
525 S. Main; Suite 300  
Tulsa, OK 74103

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PROFESSIONAL CAPITAL CORPORATION, )  
an Oklahoma corporation, )  
Plaintiff, )

vs. )

CASE NO. 87-C-273 E

RICK DOMINGO, an individual, )  
d/b/a INTERSTATE CONSULTANTS OF )  
DALLAS, INC, )  
Defendant. )

**FILED**

DEC 24 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

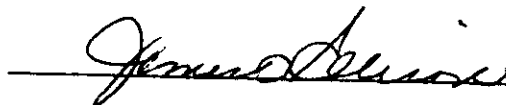
JUDGMENT BY DEFAULT

Now, on this 24<sup>th</sup> day of December, 1987, this matter comes on before me, brought on by Application of the Plaintiff, Professional Capital Corporation, wherein it seeks judgment by default against the within-named Defendant, Rick Domingo, d/b/a Interstate Consultants of Dallas, Inc. Having examined the record, and after having been advised in the premises, the Plaintiff is entitled to Judgment by Default against the Defendant in the amount as prayed for that being to-wit:

Actual damages.....\$19,124.94

Total \$ 19,124.94

So Ordered.



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
A

LUCILLE FRANCES RAME,  
Plaintiff,

vs.

SPEC. JUDGE DAVID BOX, ET AL.,  
Defendants.

No. 87-C-508-C ✓

O R D E R

Now before the Court for its consideration is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate, the latter filed on August 11, 1987.

Plaintiff filed this action under 42 U.S.C. §1983 against various judges and prosecuting officials alleging that the defendants had violated her civil rights in the course of her trial in Craig County District Court, Case No. CRF-81-24.


The Magistrate recommended that the defendants' motion to dismiss be granted on the basis of judicial and prosecutorial immunity, and that the plaintiff be instructed to pursue a writ of habeas corpus.

The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the report and recommendation of the Magistrate is reasonable under the circumstances of this case and consistent with applicable law.

Plaintiff should submit an application for writ of habeas corpus pursuant to 28 U.S.C. §2254, if she wishes to pursue the allegations raised in her complaint.

It is the Order of the Court that the motion of the defendants to dismiss is hereby GRANTED.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

Entered

REC 24 11A

JACKSON, MISSISSIPPI  
U.S. DEPT. OF JUSTICE

)  
)  
)  
)  
)  
)  
)  
)  
)

No. 86-C-1134-C✓

Defendant.


Plaintiff filed this action under 42 U.S.C. §1983 for the alleged violation of his civil rights by defendant Adams, a nurse at Eastern State Hospital. Adams filed a motion to dismiss, which was subsequently converted to a motion for summary judgment. After hearing, the Magistrate recommended that the motion be denied because the defendant had failed to identify that portion of the record demonstrating the absence of a genuine issue of material fact. In its objection, the defendant contends that he "stands ready" to produce certain items of evidence; however, they are not produced for this Court and apparently were not produced for the Magistrate. Under Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986), the moving party need not produce evidence showing the absence of a genuine issue of material fact, but may

Plaintiff filed this action under 42 U.S.C. §1983 for the alleged violation of his civil rights by defendant Adams, a nurse at Eastern State Hospital. Adams filed a motion to dismiss, which was subsequently converted to a motion for summary judgment. After hearing, the Magistrate recommended that the motion be denied because the defendant had failed to identify that portion of the record demonstrating the absence of a genuine issue of material fact. In its objection, the defendant contends that he "stands ready" to produce certain items of evidence; however, they are not produced for this Court and apparently were not produced for the Magistrate. Under Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986), the moving party need not produce evidence showing the absence of a genuine issue of material fact, but may

satisfy its burden by pointing out that there is an absence of evidence to support the nonmoving party's claim. At this time, the defendant has failed to satisfy Celotex.

It is the Order of the Court that the motion of the defendant for summary judgment is hereby DENIED.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 24 1987

JACK B. ... CLERK  
U.S. DISTRICT COURT

LUCILLE FRANCES RAME,  
Plaintiff,

vs.

SPEC. JUDGE DAVID BOX, ET AL.,  
Defendants.

No. 87-C-508-C

O R D E R

Now before the Court for its consideration is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate, the latter filed on August 11, 1987.

Plaintiff filed this action under 42 U.S.C. §1983 against various judges and prosecuting officials alleging that the defendants had violated her civil rights in the course of her trial in Craig County District Court, Case No. CRF-81-24.

The Magistrate recommended that the defendants' motion to dismiss be granted on the basis of judicial and prosecutorial immunity, and that the plaintiff be instructed to pursue a writ of habeas corpus.

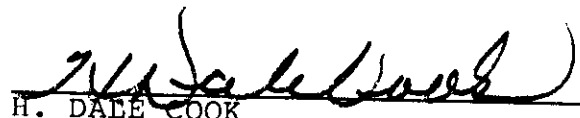
The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the report and recommendation of the Magistrate is reasonable under the circumstances of this case and consistent with applicable law.



Plaintiff should submit an application for writ of habeas corpus pursuant to 28 U.S.C. §2254, if she wishes to pursue the allegations raised in her complaint.

It is the Order of the Court that the motion of the defendants to dismiss is hereby GRANTED.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

entered

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

530 24 117

JACK M. HARRIS, CLERK  
U.S. DISTRICT COURT

UNITED VIDEO, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
OMEGA TELECOMMUNICATIONS, INC., )  
 )  
Defendant. )

No. 87-C-370-C

O R D E R

Before the Court for its consideration is the motion of defendant Omega Telecommunications, Inc. (Omega), to dismiss or alternatively to stay proceedings, and the report and recommendation of the Magistrate.

The Court has independently reviewed the pleadings, briefs and exhibits filed herein. The Court finds that Omega filed a patent infringement case on March 30, 1987 styled Omega Telecommunications, Inc. v. United-Satelco Transmission, Inc. and Warner Cable Corporation, No. H-87-987 in the Southern District of Texas, (Judge Lynn Hughes). Omega asserts it brought suit against Warner Cable Corporation on the belief that Warner Cable was a customer of United Video. At the same time, Omega also attempted to institute suit against United Video, but named instead "United-Satelco, Inc." since the records in the office of the Secretary of State, State of Texas, listed "United Satelco, Inc." as the corporate name. Discovering otherwise, on May 15,

1987 Omega filed a motion for leave to amend its complaint naming United Video, Inc. as a party defendant. The attorney representing Warner Cable Corporation in the Texas action is the same attorney representing United Video in Texas. Omega asserts that one week prior to May 15, 1987, Omega's attorneys contacted the attorneys for Warner Cable to determine if Warner Cable would oppose the motion to amend. On May 15, 1987 United Video filed its action for declaratory judgment with this Court. It is clear, and the Court so finds, that United Video had notice of the Texas action at the time United Video filed in this Court. Further, it is undisputed that the Texas action for patent infringement involves the same patent which is the subject of United Video's suit for declaratory judgment. The Texas case involves the same parties as this action, in addition to other parties.

In support of its motion to dismiss, Omega argues that this Court lacks in personam jurisdiction. Omega provides the affidavit of Mr. Weldon Granger, President of Omega, which attests that Omega's contact with the State of Oklahoma is limited to three events:

1. Omega, in April of 1986, visited the offices of United Video in Tulsa in an attempt to notify United Video of the infringement and to settle and resolve the difference caused by the infringement.
2. Omega, on September 15, 1986, sent a letter to United Video in Tulsa formally notifying it of infringement of the patent in this suit.
3. Omega's counsel, on January 12, 1987, sent a second letter notifying United Video of its continued infringement.

Omega asserts it has never conducted business, advertised a product or service or sold a product or service in this forum. Defendant cites several cases in support of its proposition that the mailing of notices of infringement letters into the forum alone will not sustain personal jurisdiction. Further defendant contends that this limited contact with the State of Oklahoma is inadequate to constitute "sufficient minimum contact" and would offend the "traditional notions of fair play and substantial justice" as articulated in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

In support of its motion to stay, Omega alleges that United Video has engaged in a race to the courthouse and is using the Federal Declaratory Judgment Act in an attempt to select the forum of its choice, and in an attempt to circumvent the previously filed action in Texas.

In response, United Video requests the Court to deny Omega's motions and retain jurisdiction, asserting that the Texas court lacks proper venue and in personam jurisdiction.

United Video's claim that the Texas court lacks in personam jurisdiction is discredited by that court's Order entered on August 21, 1987 wherein Judge Lynn Hughes denied United Video's motion to dismiss for lack of personal jurisdiction.

Further United Video's claim that venue is improper in Texas under 28 U.S.C. §1400(b) is discredited by the affidavit of Roy Bliss, Executive Vice President of United Video, which was filed as an exhibit by United Video in the Texas action. In the affidavit Roy Bliss attests that United Video owns signal

receiving equipment in the State of Texas. Omega asserts that since United Video is in the business of generating, transmitting and receiving television signals the presence of signal receiving equipment owned by United Video and located in Texas is sufficient to meet the requirements of 28 U.S.C. §1400(b) (which allows venue in patent infringement cases in a forum where the alleged infringer has a regularly established place of business).

The Court has considered each of the issues raised by the parties in their pleadings. The Court finds and concludes that it is an unnecessary waste of the Court's time and the parties' resources for discovery to proceed simultaneously in these parallel cases. The Court concludes that, even without the benefit of discovery, it is highly questionable whether in personam jurisdiction has been obtained over defendant Omega. However, the Court will not reach this issue since the Texas court has previously determined it has personal jurisdiction over United Video. Further, this Court feels obligated to defer to the Texas court which obtained jurisdiction prior to United Video filing its action in this Court.


It is therefore the Order of the Court that the motion of defendant to dismiss for lack of in personam jurisdiction is DENIED at this time, with right to reurge, if necessary.

It is the further Order of the Court that defendant's motion to stay these proceedings until a final determination has been made in civil action No. H-87-987 in the United States District Court for the Southern District of Texas is hereby GRANTED.

Parties to file a joint status report with this Court on a six month basis until a final order is entered in the Texas action.

This Order renders moot any additional motions pending before the Court.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

entered

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 24 1987

U.S. DISTRICT COURT

DONALD H. RUGGLES,

Plaintiff,

vs.

DON DIXON,

Defendant.

No. 86-C-984-C ✓

O R D E R


Now before the Court for its consideration is the objection of the defendant to the Report and Recommendation of the Magistrate, the latter filed September 1, 1987, recommending that the motion of the defendant's counsel to withdraw be denied.

On August 10, 1987, the District Attorney's office for Tulsa County filed a motion to withdraw as counsel for defendant Dixon. This is an action under 42 U.S.C. §1983 for acts allegedly performed by Dixon while a Tulsa County sheriff's deputy. The District Attorney's office seeks withdrawal on the grounds that (1) Dixon is no longer an employee of Tulsa County, and thus there is no statutory duty to defend, and (2) Dixon committed an act outside the course of his employment. The District Attorney argues that there is a potential conflict of interest should Dixon be found liable and seek indemnification from Tulsa County. The District Attorney further advises that another attorney stands ready to assume the defense of Dixon should the District

Attorney be permitted to withdraw. Under these circumstances, the Court concludes that the motion should be granted.

It is the Order of the Court that the motion of defendant's counsel to withdraw is hereby GRANTED, on the condition that new counsel for defendant enter his appearance within ten days of the date of this Order.

IT IS SO ORDERED this 24<sup>TH</sup> day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court



Entered

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 24 1987

CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID W. RUMFELDT and )  
GROUTING SERVICES, INC., )  
 )  
Defendants. )

No. 86-C-884-C ✓

O R D E R

Now before the Court for its consideration is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate, the latter filed on September 22, 1987.

The Magistrate's Report and Recommendation contains the following statement of facts:

At all times relevant to this suit, defendant David Rumfeldt was the corporate president of Grouting Services, Inc. ("GSI"). In September, 1979, GSI borrowed \$225,000.00 from the Bank of Tulsa ("BOT"), evidenced by a promissory note which was secured by collateral, several commercial vehicles. Under the terms of the promissory note, the collateral could not be exchanged, transferred or sold without prior written consent of the bank. Rumfeldt, acting as president of GSI, subsequently sold, without prior consent of BOT, several vehicles which were collateral for its indebtedness. BOT transferred its rights under the note to the plaintiff, and plaintiff brought this action against David W. Rumfeldt, personally, for conversion of these vehicles.

The matter came on for hearing before the Magistrate on the plaintiff's motion for partial summary judgment and the defendants' motion for summary judgment. The Magistrate recommended the plaintiff's motion be denied, to which the plaintiff does not object. The Magistrate further recommended that the defendants' motion be granted, on the ground that BOT had consented to the sale. Both parties agree that the Magistrate apparently failed to take account of an affidavit submitted by plaintiff, and that there is a factual issue regarding consent.

Therefore the Court will consider the other principal issue raised in defendants' motion. 12A O.S. §9-311 provides in pertinent part:

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default, but the interest so transferred is subject to the creditor's security interest if it is properly perfected ...


Section 9-311 of the Uniform Commercial Code provides the holder of a perfected security interest with a conversion action against the subsequent transferee. See, e.g., United States v. Fulpail Cattle Sales, Inc., 617 F.Supp. 73 (E.D.Wis. 1985). In the case at bar, BOT apparently failed to perfect its security interest, however. An attached but unperfected security interest is still enforceable against the debtor. 12A O.S. §§9-203(1), 9-201. Nevertheless, §9-311 permits the debtor to transfer the collateral, but does not invalidate a provision in the security

agreement, such as is present here, which renders such a transfer a default by the debtor. See, e.g., Brummund v. First Nat. Bank of Clovis, 656 P.2d 884 (N.M. 1983). However, the plaintiff has cited no authority, and the Court is aware of none, which provides that the creditor's remedy in such a case is a tort action for conversion, which is the only cause of action alleged herein. Rather, such actions by a debtor are in the nature of a breach of contract; the creditor must resort to the remedial provisions under Part Five of Article Nine. This creditor has not done so, and therefore the pending motion of the defendants must be granted.

It is the Order of the Court that the motion of the plaintiff for partial summary judgment is hereby DENIED.

It is the further Order of the Court that the motion of the defendants for summary judgment is hereby GRANTED.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

entered

JAC  
U.S. DISTRICT COURT

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No. 86-C-986-C

),

)

O R D E R

Now before the Court for its consideration is the objection of the plaintiffs to the report and recommendation of the Magistrate, the latter filed on July 29, 1987.


On December 24, 1986, this Court entered default judgment against the defendant in the total amount of \$1,976,895.50. On January 23, 1987, the defendant filed its motion to vacate the default judgment. On July 15, 1987, a hearing was held before the United States Magistrate after which he recommended that the motion to vacate be granted but that attorney fees be granted plaintiffs in the amount of \$13,243.88.

The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the report and recommendation of the Magistrate is reasonable under the circumstances of this case and consistent with applicable law.

It is the Order of the Court that the motion of the defendant to vacate default judgment should be and hereby is GRANTED.

It is the further Order of the Court that plaintiffs be awarded attorney fees against the defendant in the amount of \$13,243.88.

IT IS SO ORDERED this 24<sup>th</sup> day of December, 1987.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

8

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 23 1987

BILLY ALLEN HARROLLE

Plaintiff,

vs.

BOB DICK (Police Chief)

STEVE MIDDLENTON, DALE COLE

Defendant.

No. 87-C-382-B

Jack C. Senter, Clerk  
U.S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff Billy Allen Harrolle, pursuant to F.R.C.P. Rule 41(a) and dismisses the above captioned and numbered lawsuit with prejudice to its future reinstatement.

Billy Allen Harrolle  
Billy Allen Harrolle  
Plaintiff

David L. Pauling  
David L. Pauling  
Attorney for Defendant  
Bob Dick

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 23 1987

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

ALVIN L. THOMPSON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 84-C-421-C
	)	
OTIS R. BOWEN, M.D.,	)	
Secretary of Health and	)	
Human Services,	)	
	)	
Defendant.	)	

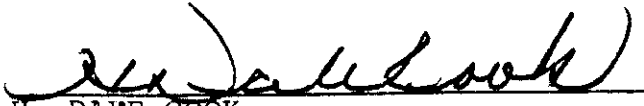
O R D E R

Now before the Court for its consideration is the amended motion of the plaintiff for attorney fees and for approval of award to claimant. Plaintiff's counsel requests a fee in the amount of \$435 and the government does not object.

Accordingly, it is the Order of the Court that this Court approves the award of past-due benefits to plaintiff as stated in the April 19, 1987 Award Certificate.

It is the further Order of the Court that counsel for plaintiff is hereby awarded fees in the amount of \$435.

IT IS SO ORDERED this 23 day of December, 1987.

  
H. DALE COOK  
Chief Judge, U. S. District Court

GLH/LAL/lc  
11/09/87

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 87-C-66-E
	)	
ARMSTRONG WORLD INDUSTRIES, INC., et al.,	)	
	)	
Defendants.	)	

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Jerry Reed Cavin, and hereby  
dismisses with prejudice the Defendant The Babcock & Wilcox  
Company, a corporation, from the above-styled cause of action.

Law Offices of  
JOHN W. NORMAN INCORPORATED  
Attorneys for Plaintiffs

By: 

GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200



CERTIFICATE OF SERVICE

This is to certify that on this 24 day of Dec, 1987, a true and correct copy of the above and foregoing document was mailed with postage prepaid thereon to:

CO-COUNSEL FOR PLAINTIFFS  
Richard F. Gerry, Esq.  
Casey, Gerry, Casey, Westbrook,  
Reed & Hughes  
110 Laurel Street  
San Diego, CA 92101-1486

ATTORNEYS FOR DEFENDANTS,  
ARMSTRONG WORLD INDUSTRIES, INC.,  
THE CELOTEX CORPORATION,  
EAGLE-PICHER INDUSTRIES, INC.,  
FLEXITALLIC GASKET COMPANY, INC.,  
THE FLINTKOTE COMPANY,  
H. K. PORTER COMPANY, INC.,  
KEENE CORPORATION,  
KEENE BUILDING PRODUCTS, INC.  
NATIONAL GYPSUM COMPANY,  
OWENS-CORNING FIBERGLAS CORPORATION,  
PITTSBURGH CORNING CORPORATION, and  
GAF CORPORATION  
John F. McCormick, Jr., Esq.  
Pray, Walker, Jackman, Williamson & Marlar  
900 Oneok Plaza  
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ATTORNEYS FOR DEFENDANT, JOHN CRANE-HOUDAILLE, INC.  
W. Michael Hill, Esq.  
Secrest & Hill  
American Federal Building  
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Tulsa, OK 74136

ATTORNEYS FOR DEFENDANT, RAYMARK INDUSTRIES, INC.  
Alfred K. Morlan, Esq.  
Joan Godlove, Esq.  
Jones, Givens, Gotcher, Bogan & Hilborne, P.C.  
3800 First National Tower  
Tulsa, OK 74103

ATTORNEYS FOR DEFENDANT, GARLOCK, INC.  
Stephen S. Boaz, Esq.  
Durbin, Larimore & Bialick, P.C.  
920 N. Harvey  
Oklahoma City, OK 73102-2610

ATTORNEYS FOR DEFENDANT, THE MILLWHITE CO., INC.  
James D. Foliart, Esq.  
G. Scott Ray, Esq.  
Foliart, Huff, Ottaway & Caldwell  
20th Floor, First National Center  
Oklahoma City, OK 73102

ATTORNEYS FOR DEFENDANT, THE BABCOCK & WILCOX COMPANY  
P. David McKnight  
The Travelers Companies  
P.O. Box 1834  
Hartford, CT 06144

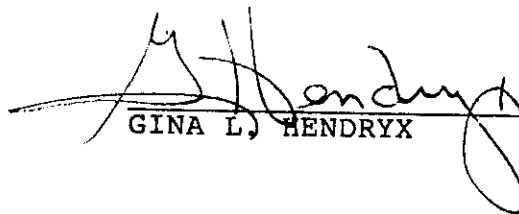
ATTORNEYS FOR DEFENDANT, ANCHOR PACKING COMPANY  
Jack M. Thomas, Esq.  
Daniel E. Holeman, Esq.  
Best, Sharp, Thomas, Glass & Atkinson  
525 S. Main  
Suite 1500  
Tulsa, OK 74103

ATTORNEYS FOR DEFENDANT, LAMONS METAL GASKET CO.  
Chris Rhodes, Esq.  
Rhodes, Hieronymus, Jones, Tucker & Gable  
2800 Fourth National Bank Building  
Tulsa, OK 74119

ATTORNEYS FOR DEFENDANT, TULSA GASKET  
MANUFACTURING COMPANY  
Richard D. Gibbon, Esq.  
Keith D. Lapuyade, Esq.  
Gibbon, Gladd & Associates  
1611 S. Harvard Avenue  
Tulsa, OK 74112

ATTORNEY FOR DEFENDANT, A. W. CHESTERTON COMPANY  
Eugene Robinson, Esq.  
McGivern, Scott, Gilliard, McGivern & Robinson  
P.O. Box 2619  
1515 S. Boulder  
Tulsa, OK 74101-2619

ATTORNEY FOR DEFENDANT, THE HOLLOW CENTER PACKING COMPANY  
Dennis King, Esq.  
Knowles & King  
603 Expressway Tower  
2431 East 51st Street  
Tulsa, OK 74105

  
GINA L. HENDRYX

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 23 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

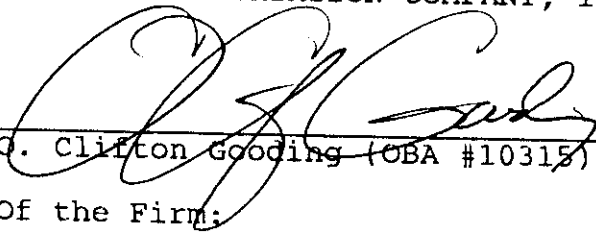
C & H TRANSPORTATION, COMPANY, INC., )  
Plaintiff, )  
Vs. )  
HYDRO DYNE COMPANY, a corporation, )  
and ENERFIN INCORPORATED, a corporation, )  
Defendants. )

Case No. 87-C-657 B

JOINT STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED that pursuant to Rule 41(a)(1),  
the above entitled action, as to the Defendant, Hydro Dyne  
Company, is to be dismissed, with prejudice, with each party to  
bear their own costs and attorney fees.

C & H TRANSPORTATION COMPANY, INC.

By:   
O. Clifton Gooding (CBA #10315)  
Of the Firm:

DERRYBERRY, QUIGLEY, PARRISH  
& GOODING  
4800 North Lincoln Boulevard  
Oklahoma City, OK 73105  
(405) 528-6569

Attorney(s) for Plaintiff  
C & H TRANSPORTATION COMPANY, INC.

HYDRO DYNE COMPANY, INC.

By: Chris Liossis  
Chris Liossis, President  
225 Wetmore Avenue S.E.  
Massillon, OH 44646  
(216) 832-5076

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FLYNN ENERGY CORP.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-163-B
	)	
TULSA COMMERCE BANCSHARES,	)	
INC., et al.,	)	
	)	
Defendants.	)	

**FILED**

**DEC 23 1987**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

ORDER OF DISMISSAL  
WITH PREJUDICE

THIS MATTER CAME BEFORE THE COURT upon the motion of Plaintiff, Flynn Energy Corp., for an order, pursuant to Rule 41(a)(2), Fed. R. Civ. P., dismissing with prejudice its claims asserted herein against Defendants Bank of Commerce and Trust Company, and the Federal Deposit Insurance Corporation Liquidating Agent for Bank of Commerce and Trust Company, the agreement of Flynn Energy Corp., Bank of Commerce and Trust Company, and the Federal Deposit Insurance Corporation, Liquidating Agent, as shown by the signatures of their counsel below, and the entire record herein.

IT APPEARING TO THE COURT that Plaintiff Flynn Energy Corp. and Defendants Bank of Commerce and Trust Company, and the Federal Deposit Insurance Corporation, Liquidating Agent, have resolved all disputes existing between them relating to the claims asserted in this action; and

IT FURTHER APPEARING TO THE COURT that neither Defendant Bank of Commerce and Trust Company nor the Federal

Deposit Insurance Corporation, Liquidating Agent, have asserted a counterclaim against Plaintiff Flynn Energy Corp., nor have either of these two asserted cross claims against any defendant, nor has any other defendant asserted a cross claim against either of these defendants; and

IT FURTHER APPEARING TO THE COURT that both Bank of Commerce and Trust Company and the Federal Deposit Insurance Corporation, Liquidating Agent, consent to their dismissal from this action and agree to pay their own costs and attorneys fees incurred herein; and

IT FURTHER APPEARING TO THE COURT that this order should not prejudice any claim of Plaintiff Flynn Energy Corp. against any other defendant in this action;

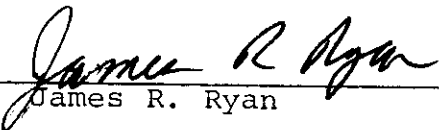
NOW, THEREFORE, IT IS ORDERED that Defendants Bank of Commerce and Trust Company and the Federal Deposit Insurance Corporation, Liquidating Agent, shall be, and the same hereby are, dismissed from this action with prejudice, with each of them to pay its own costs and attorneys' fees incurred in this action; this Order of Dismissal does not dismiss, prejudice, or in any manner affect any claim which Plaintiff Flynn Energy Corp. has asserted against other defendants in this action.

Dated this 23rd day of December, 1987.

S/ THOMAS R. BRETT  
\_\_\_\_\_  
United States District Judge

Approved for Entry:

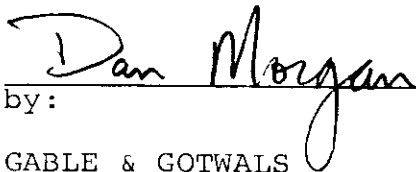
JAMES R. RYAN  
LAURENCE L. PINKERTON  
DAVID J. HYMAN  
DAVID R. CORDELL

  
by: James R. Ryan

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for Plaintiff Flynn Energy  
Corporation

SIDNEY G. DUNAGAN  
J. DANIEL MORGAN

  
by:

GABLE & GOTWALS  
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Attorneys for Federal Deposit Insurance  
Corporation and Bank of Commerce and  
Trust Company

GLH/LAL/lc  
11/09/87

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 87-C-66-E
	)	
ARMSTRONG WORLD INDUSTRIES, INC., et al.,	)	
	)	
Defendants.	)	

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Jimmy Hugh Haynes and Rosalie Haynes, and hereby dismiss with prejudice the Defendant The Babcock & Wilcox Company, a corporation, from the above-styled cause of action.

Law Offices of  
JOHN W. NORMAN INCORPORATED  
Attorneys for Plaintiffs

By: 

GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200



CERTIFICATE OF SERVICE

This is to certify that on this 24 day of Dec, 1987, a true and correct copy of the above and foregoing document was mailed with postage prepaid thereon to:

CO-COUNSEL FOR PLAINTIFFS

Richard F. Gerry, Esq.  
Casey, Gerry, Casey, Westbrook,  
Reed & Hughes  
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ATTORNEYS FOR DEFENDANTS,  
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THE CELOTEX CORPORATION,  
EAGLE-PICHER INDUSTRIES, INC.,  
FLEXITALLIC GASKET COMPANY, INC.,  
THE FLINTKOTE COMPANY,  
H. K. PORTER COMPANY, INC.,  
KEENE CORPORATION,  
KEENE BUILDING PRODUCTS, INC.  
NATIONAL GYPSUM COMPANY,  
OWENS-CORNING FIBERGLAS CORPORATION,  
PITTSBURGH CORNING CORPORATION, and  
GAF CORPORATION

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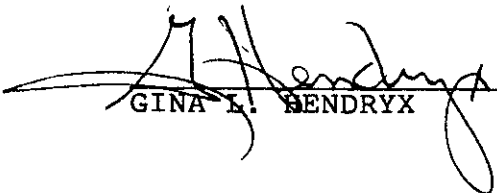
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GINA L. HENDRYX

GLH/LAL/lc  
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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

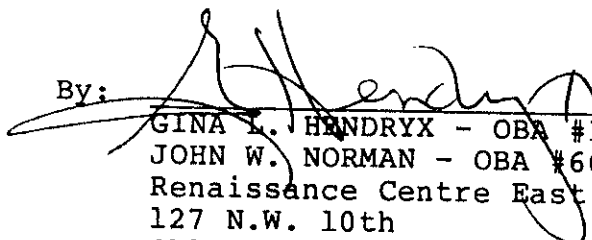
BOBBY LEE BAUER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 87-C-66-E
	)	
ARMSTRONG WORLD INDUSTRIES, INC., et al.,	)	
	)	
Defendants.	)	

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Bobby Lee Bauer and Helen L. Bauer, and hereby dismiss with prejudice the Defendant The Babcock & Wilcox Company, a corporation, from the above-styled cause of action.

Law Offices of  
JOHN W. NORMAN INCORPORATED  
Attorneys for Plaintiffs

By:

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
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THE FLINTKOTE COMPANY,  
H. K. PORTER COMPANY, INC.,  
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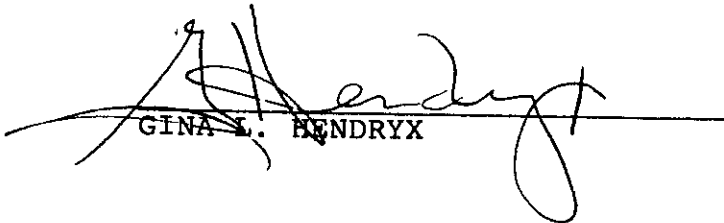
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GINA L. HENDRYX

GLH/LAL/lc  
11/09/87

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 87-C-66-E
	)	
ARMSTRONG WORLD INDUSTRIES, INC., et al.,	)	
	)	
Defendants.	)	

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Fred Faulkner and Margaret N. Faulkner, and hereby dismiss with prejudice the Defendant The Babcock & Wilcox Company, a corporation, from the above-styled cause of action.

Law Offices of  
JOHN W. NORMAN INCORPORATED  
Attorneys for Plaintiffs

By: 

~~GINA L. HENDRYX~~ - OBA #10330  
JOHN W. NORMAN - OBA #6699  
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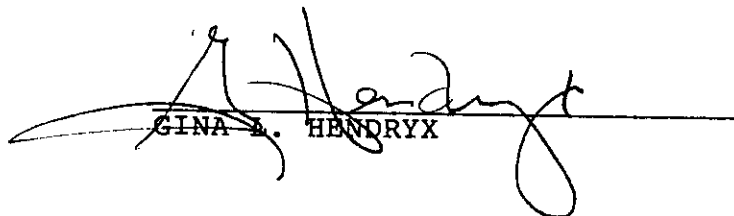
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GINA L. HENRY



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK  
AND TRUST COMPANY,

Plaintiff,

vs.

J. PETE WILSON, et al.,

Defendants.

No. 85-C-841-E

**FILED**

DEC 22 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**JUDGMENT**

This action came before the Court on the 30th day of Septemer, 1987 upon the various Motions for Summary Judgment, Cross-Motions for Summary Judgment and Supplemental Motions for Summary Judgment filed by the parties herein. The Court, after having reviewed said Motions, the Briefs in support thereof and in opposition thereto, and the pertinent materials in the record and the Magistrate's Findings and Recommendations, ordered that the Plaintiff's Motions for Summary Judgment and Supplemental Motion for Summary Judgment should be granted in their entirety and that the Defendants' Motion for Summary Judgment and Supplemental Motion for Summary Judgment should be denied in their entirety.


IT IS THEREFORE ORDERED by the Court that Plaintiff is granted judgment as follows:

- A. Against Defendant J. Pete Wilson for the principal sum of \$112,500.00, plus accrued and unpaid prejudgment interest owing through December 21, 1987, in the amount

- of \$103,205.90 plus post-judgment interest from and after December 21, 1987 at the rate of 7.22% per annum;
- B. Against Defendants, Evergreen '81, Aurelia C. Tooley, as Executrix of the Estate of Bobby J. Tooley, Robert J. McCrary, Ricky J. McCrary, Tim Johnson, W. S. January, Dallas Kirk Holm, Eugene Fallis, David Doyle, Charles W. Wilson, Othal W. Huddleston and Virgil R. Huddleston, jointly and severally, for the principal sum of \$258,750.00, plus accrued and unpaid interest owing through December 21, 1987, in the amount of \$237,373.57, plus post-judgment interest from and after December 21, 1987 at the rate of 7.22% per annum;
- C. Against Defendant, Roy W. Conaway, for the principal sum of \$56,250.00 plus accrued and unpaid interest owing through December 21, 1987 in the amount of \$46,924.57 plus post-judgment interest from and after December 21, 1987 at the rate of 7.22% per annum.

These amounts do not reflect the prospect of partial payment of the debt by the F.D.I.C. Upon receipt of payment by the F.D.I.C. on the receiver's certificate, the Plaintiff shall promptly apply such payment to the Defendants' debt.

DATED this 21<sup>st</sup> day of December, 1987.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 22 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

D.T., a minor, by his legally  
appointed guardians, M.T. and  
K.T., in their own behalf as  
parents and legal guardians of  
D.T., et al.,

Plaintiffs,

vs.

No. 85-C-206-E

INDEPENDENT SCHOOL DISTRICT  
NO. 16 OF PAWNEE COUNTY,  
OKLAHOMA,

Defendant.

**JUDGMENT**

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and jury having rendered its verdict,

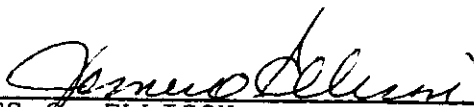
IT IS THEREFORE ORDERED that the Plaintiff D.T., a minor, by his legally appointed guardians, M.T. and K.T. recover of the Defendant, Independent School District No. 16 of Pawnee County, Oklahoma the sum of \$42,000.00, with interest thereon at the rate of 7.22 per cent as provided by law, and his costs of action.

IT IS FURTHER ORDERED that the Plaintiff F.H. Jr., a minor, by his legally appointed guardians, F.H. and L.H. recover of the Defendant, Independent School District No. 16 of Pawnee County, Oklahoma the sum of \$50,000.00, with interest thereon at the rate of 7.22 per cent as provided by law, and his costs of action.

IT IS FURTHER ORDERED that the Plaintiff P.M., a minor, by his legally appointed guardian R.T. recover of the Defendant,

Independent School District No. 16 of Pawnee County, Oklahoma the sum of \$42,000.00, with interest thereon at the rate of 7.22 per cent as provided by law, and his costs of action.

DATED this 21<sup>st</sup> day of December, 1987.

  
\_\_\_\_\_  
JAMES S. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

BOBBY D. WALTERS, et al.,  
Plaintiffs,  
vs.  
SUNSET DISPOSAL, INC., a  
Kansas corporation,  
Defendant.

No. 87-C-391-B

**FILED**

**DEC 22 1987**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

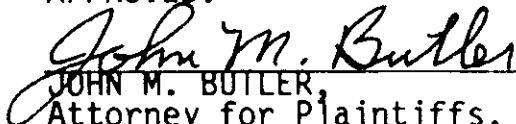
ORDER OF DISMISSAL WITH PREJUDICE

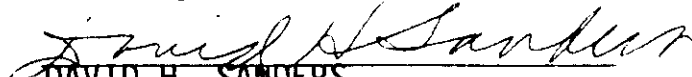
This cause came on for hearing on this 22nd day of December, 1987, upon the APPLICATION TO DISMISS WITH PREJUDICE of the plaintiffs. The Court finds that the plaintiffs, Bobby D. Walters, Frank Cottrell, Ivon Cleveland, Tolbert Clifton, and James Ray Moore, have heretofore settled all of their claims and causes of action against the defendant for wages, penalties, damages, and attorney's fees, and that the claims herein asserted are now moot and this action should be dismissed with prejudice.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the APPLICATION TO DISMISS WITH PREJUDICE of the plaintiffs be and the same is hereby sustained and this action be and the same is hereby dismissed with prejudice.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
JOHN M. BUTLER,  
Attorney for Plaintiffs.

  
DAVID H. SANDERS,  
Attorney for Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROGER E. SUSI,

Plaintiff,

v.

FRED W. WOODSON, Trustee and  
TRIAD BANK, N.A. FIRST NATIONAL  
BANK OF VINITA; I.R.L., INC.,  
and UNITED STATES, Trustee,

Defendant.

87-C-860-B

**E I L E D**

**DEC 22 1987**

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

This matter comes before the Court on the Debtor's Motion for Leave to Appeal from an interlocutory order of the United States Bankruptcy Court for the Northern District of Oklahoma. For the reasons set forth below, the Motion for Leave to Appeal is denied.

On September 23, 1987, the Bankruptcy Court entered an ex parte Order authorizing the Trustee of the bankruptcy estate to employ as special counsel, the law firm of Nichols, Wolfe, Stamper, Nally & Fallis, Inc.

On September 28, 1987, the Trustee was advised by the Debtor that Nichols, Wolfe, et al, may be engaged in impermissible dual representation due to a conflict of interest. Nichols, Wolfe, et al, already represent creditors of the bankruptcy estate in a state court proceeding. As special counsel to the Trustee they would represent the estate itself.

On Motion of the Trustee, a special hearing before the Bankruptcy Court was held on October 8 1987, to address the

conflict of interest issue. The Bankruptcy Court thereupon found that no actual conflict of interest existed, and ordered that Nichols, Wolfe, et al may proceed to represent the Trustee. It is from this Order that Debtor now seeks leave to appeal.

Authority for the District Court to hear appeals from an interlocutory order is found at 28 U.S.C. §158, which provides in part:

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under Section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving; and, ...

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

Section 158 is silent as to what standard or considerations should be employed by the District Court in determining whether leave to appeal should be granted.

Because bankruptcy appeals are to be taken in the same manner as appeals in civil matters generally, the Court finds the statutory provision governing interlocutory appeals from district courts to appellate courts should be applied, which is found at 28 U.S.C. §1292(b). In re Chandler, 66 B.R. 334, 336 (N.D. Ga. 1986); Lady Madonna Industries v Pereira, 76 B.R. 281, 286 (S.D. N.Y. 1987); In re Johns-Mansville Corp, 45 B.R. 833, 835 (S.D. N.Y. 1984). As generally formulated the three grounds set forth



in §1291(b) must be met before leave to appeal will be granted. They are: (1) that the order involves a controlling question of law; (2) that there is substantial ground for difference of opinion regarding the question of law; and (3) that an immediate appeal from the order may materially advance the ultimate termination of litigation.

In testing Debtor's Motion against this standard, the Court finds the court's opinion in In re Klein, 70 B.R. 378 (N.D. Ill. 1987) particularly persuasive. In re Klein held that an order disqualifying counsel from representing a debtor was not appealable as an interlocutory order. The Court held "The issue involved is factual; i.e., whether a conflict which requires disqualification is actually present." Id at 380. The Court went on to note that "regardless of whether [the] Court upheld the disqualification or reversed it, the bankruptcy case itself would continue." (Footnote omitted) (Id.)

Likewise, in the case at bar, the issue to be decided is not a question of law. It is, as in the case of In re Klein, an issue of fact, i.e., whether a conflict is actually present which requires the disqualification of counsel.

Since the order under attack does not involve a question of law, the first two essential grounds for granting leave to appeal are lacking. Moreover, an immediate appeal at this point would not advance the ultimate termination of litigation, which is the third ground for granting leave to appeal. Were the Court to ultimately affirm the order, the bankruptcy proceeding would


continue as it had prior to the appeal. On the other hand, were the Court to ultimately reverse the order, the resulting search for and orientation of new counsel, and the inevitable concomitant motions for continuance, would likely result in retarding the ultimate termination of litigation. Therefore, none of the grounds for granting leave to appeal are present in this case.

Debtor urges that the collateral order exception should apply. An order denying disqualification of counsel for the trustee of the estate does not qualify for interlocutory review under the collateral order exception. In Re Delta Services industries, 782 F.2d 1267, 1272-73 (5th Cir. 1986).

Finally Debtor urges that the order would be appealable if the Bankruptcy Court had failed to state some rational or reasonable basis for its decision, citing In Re Sentinel Bonding Agency, Inc., 24 B.R. 551 (W.D. Okla. 1981). This Court has reviewed the transcript of the hearing wherein the Bankruptcy Court entered its order and notes that Debtor's argument is without merit.

In general, exceptional circumstances must be present to warrant allowing an interlocutory appeal. Coopers & Lybrand v. Livesay, 437 U.S. 463, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1977). Exceptional circumstances do not exist in this case. Therefore, the Debtor's Motion for Leave to Appeal is denied.

Dated this 22<sup>nd</sup> day of December, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SHONDEAN GOSCINSKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 87-C-510-E
	)	
METROPOLITAN LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant, Counter-	)	
claimant and Third-	)	
Party Plaintiff,	)	
	)	
vs.	)	
	)	
JUDY M. GOSCINSKI, EXECUTOR OF	)	
THE ESTATE OF DAVID E. GOSCINSKI,	)	
	)	
Third-Party	)	
Defendant.	)	
	)	Consolidated with
SHONDEAN GOSCINSKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 87-C-540-C
	)	
THE PRUDENTIAL INSURANCE COMPANY	)	
OF AMERICA,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
JUDY M. GOSCINSKI, EXECUTOR OF	)	
THE ESTATE OF DAVID E. GOSCINSKI,	)	
	)	
Third-Party	)	
Defendant.	)	

ORDER

On this 21st day of December, 1987, this matter comes  
before me on the Joint Stipulation of Dismissal filed in  
these consolidated actions by the Plaintiff, Shondean Goscinski,

the Third-Party Defendant, Judy M. Goscinski, Executor of the Estate of David E. Goscinski, and the defendants, Metropolitan Life Insurance Company ("Metropolitan") and The Prudential Insurance Company of America ("Prudential"). The Court having examined the Joint Stipulation, and being fully advised, finds that the claims of Metropolitan and Prudential against the third-party defendant, Judy M. Goscinski, Executor of the Estate of David E. Goscinski, should be dismissed.

SO ORDERED this 21st day of December, 1987.

S/John L. Phipps  
U.S. District Court

---

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

DEC 21 1987

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JIMMY L. WHITEHEAD,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 87-C-865-E

DEFAULT JUDGMENT

This matter comes on for consideration this 21st day of December, 1987, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Jimmy L. Whitehead, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jimmy L. Whitehead, acknowledged receipt of Summons and Complaint. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Jimmy L. Whitehead, for the principal sum of \$987.10, plus interest at the rate of 9 percent per annum and administrative costs of \$.68 per month from December 24, 1984, \$.67 per month from February 1, 1985, \$.63 per month from February 1, 1986, and \$.70 per month from February 1, 1987, until judgment, plus interest thereafter at the current legal rate of 7.22 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

14686/tlr

No. 85-C-794-E

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiffs, Lawrence Hutchings and Amy Hutchings, against the Defendant, Clarksburg

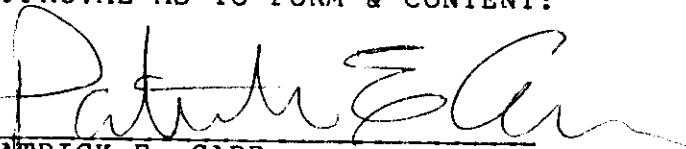


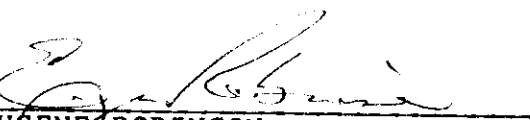
Casket Company, be and the same are hereby dismissed with prejudice to any future action.

*24 JAN 1964*

JUDGE OF THE UNITED STATES  
DISTRICT COURT

APPROVAL AS TO FORM & CONTENT:

  
PATRICK E. CARR  
Attorney for Plaintiff

  
EUGENE ROBINSON  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL J. STERTEFELDT, )  
 )  
Defendant. ) CIVIL ACTION NO. 87-C-919-B

1987  
discovery

AGREED JUDGMENT

This matter comes on for consideration this 21  
17  
day of December, 1987, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney, and the Defendant, Michael J. Stertefeldt, appearing  
pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, Michael J. Stertefeldt,  
acknowledged receipt of Summons and Complaint on November 17,  
1987. The Defendant has not filed an Answer but in lieu thereof  
has agreed that he is indebted to the Plaintiff in the amount  
alleged in the Complaint and that judgment may accordingly be  
entered against him in the amount of \$564.67, until judgment,  
plus interest thereafter at the legal rate until paid, plus the  
costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael J. Stertefeldt, in the amount of \$564.67, until judgment, plus interest thereafter at the current legal rate of 7.22 percent per annum until paid, plus the costs of this action.

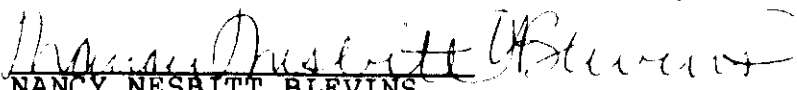
S/ THOMAS R. LEE

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant U.S. Attorney

  
MICHAEL J. STERTEFELDT

NNB/mp

**F I L E D**

DEC 21 1987

ROBERT COTNER,

Plaintiff,

vs.

DAVID PAULING, et al.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-1056-E

O R D E R


The Court has for consideration the Findings and Recommendations of the Magistrate filed September 14, 1987. After careful consideration of the record and the issues, including the briefs and memoranda filed by the parties, the Court concludes that the Findings and Recommendations of the Magistrate should be affirmed and adopted by the Court, that Defendants' Motion to Dismiss should be granted, and that Plaintiff's action should be dismissed with prejudice.

Plaintiff filed this action pro se seeking damages under the Federal Racketeering and Corrupt Organizations Act (RICO), 18 U.S.C. §1962 et seq., and for the alleged violation of unspecified constitutional and civil rights. The Defendants filed similar, separate motions to dismiss, and the Magistrate considered the separate motions together. The Magistrate found Plaintiff's complaint frivolous in that it fails to state a cause of action against any of the named Defendants, and that it makes only conclusory allegations of constitutional deprivations. The Court finds that the Magistrate's conclusions are supported by

the record and that they serve as appropriate grounds for dismissal.

IT IS THEREFORE ORDERED that the Findings and Recommendations of the Magistrate are hereby affirmed and adopted as the Order of this Court, that Defendants' Motions to Dismiss are sustained, and that this action is dismissed with prejudice.

ORDERED this 21<sup>st</sup> day of December, 1987.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

DEC 21 1987

ARKOMA GAS COMPANY,  
a Texas corporation,

Plaintiff;

v.

ARKLA, INC., a Delaware  
corporation,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 86-C-1004-E

ADMINISTRATIVE CLOSING ORDER

IT APPEARING that these proceedings should be held in abeyance pursuant to the settlement and compromise affected by the parties, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. If within 45 days hereof, the parties have not reopened for the purpose of obtaining such a final determination, this action will be deemed to be dismissed with prejudice.

IT IS SO ORDERED this 21<sup>st</sup> day of December, 1987.

/s/ JAMES O. FUSON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

DEC 21 1987

TRACI CLAUDIO, ROBERT and  
MARILYN CAREY,

Plaintiffs,

vs.

FIRESTONE TIRE & RUBBER COMPANY,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-692-E

ORDER OF DISMISSAL

NOW on this 21<sup>st</sup> day of December, 1987, upon the written application of the Plaintiffs, Traci Claudio, Robert Carey and Marilyn Carey, and the Defendant, Firestone Tire and Rubber Company, for a Dismissal with Prejudice as to all claims and causes of action of these parties involved in the Complaint of Claudio & Carey vs. Firestone, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, and have requested the Court to Dismiss said Complaint with prejudice, to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiffs, Traci Claudio, Robert Carey, and Marilyn Carey, and the Defendant, Firestone Tire and Rubber Company, be and the same hereby are dismissed with prejudice to any future action.

JUDGE OF THE UNITED STATES DISTRICT  
COURT, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

NORMAN GILDER

*Norman Gilder*

Attorney for the Plaintiffs

SCOTT D. CANNON

*Scott D Cannon*

Attorney for the Defendant



FILED

DEC 21 1987

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IONE BOSS, et al.,

Plaintiffs,

vs.

G.P.P.A.W. -- EMPLOYERS  
RETIREE TRUST, et al.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 84-C-269-E  
AND 84-C-147-E  
(Consolidated)

A M E N D E D  
O R D E R

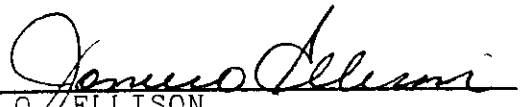
The Court has before it for its consideration the application of the individual Plaintiffs in Case No. 84-C-269-E to dismiss their claims without prejudice to either refiling the case or to receiving the benefit of any order issued in the companion case, 84-C-147-E. In response, the Defendants request the Court to dismiss the case with prejudice, or to impose upon the Plaintiffs the attorney's fees and expenses of the Defendants as a condition to dismissal, or by conditioning a refiling of the action upon payment of Defendants' attorney's fees and expenses.

Under Rule 41(a)(2) an action shall not be dismissed at the Plaintiff's instance except upon order of the Court and upon such terms and conditions as the Court deems proper. In determining whether conditions of dismissal are required, the Court must consider the interest of both the Plaintiffs and the Defendants. 5 Moore's Federal Practice, ¶41.05[1] (2nd Ed. 1987). Although the Court may impose the payment of Defendants' attorney's fees and costs as a condition for dismissal, a

dismissal with prejudice is not justified unless the Defendant will suffer some prejudice other than the mere prospect of a second lawsuit. 5 Moore's Federal Practice, ¶41.05[1], supra. Spencer v. Moore Business Forms, Inc., 87 F.R.D. 118 (N. D. Ga. 1980). Because no dispositive motion has been granted in favor of the Defendants and against the individual Plaintiffs, there is no basis for the Court to dismiss the action with prejudice. Furthermore, because of the participation of Liberty Glass in the filing of the action, the Court believes it would be unjust to impose the payment of the Defendants' attorney's fees and costs upon the individual Plaintiffs.

Accordingly, the application for dismissal of claims of the individual Plaintiffs is granted without prejudice. The Court having previously held that the state fiduciary claims are preempted under ERISA, and having held that Plaintiff Liberty Glass Company has no standing to maintain the action under ERISA, Liberty Glass is no longer a party to the action. Therefore, the action numbered 84-C-269-E is dismissed in its entirety.

DATED this 21<sup>st</sup> day of December, 1987.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

DEC 21 1987

JAY HARRINGTON and FRANCINE  
HARRINGTON,

Plaintiffs,

**vs.**

K-MART CORPORATION, a foreign corporation,

**Defendant.**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-126-E

### ORDER OF DISMISSAL

ORDER OF DISMISSAL

NOW on this 21<sup>st</sup> day of December, 1987, upon the written application of the Plaintiffs, Jay Harrington and Francine Harrington, and the Defendant, K-Mart Corporation, for a Dismissal with Prejudice as to all claims and causes of action of these parties involved in the Complaint of Harrington vs. K-Mart, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, and have requested the Court to Dismiss said Complaint with prejudice, to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiffs, Jay Harrington and Francine Harrington, and the Defendant, K-Mart Corporation, be and the same hereby are dismissed with prejudice to any future action.

W. JAMES G. ELLISON

JUDGE OF THE UNITED STATES DISTRICT  
COURT, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

R. JAY MCATEE

R. Jay Mcatee  
Attorney for the Plaintiffs

STEPHEN C. WILKERSON

Stephen C. Wilkerson  
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DUSTY DAVIS,

Plaintiff,

vs.

Case No. 87-C-689 B

THE CUMMINS CONSTRUCTION  
COMPANY, INC., a/k/a CUMMINS  
TRUCKING a/k/a CUMMINS,  
and JOHN DOE, INC.,

Defendants.

ORDER

Upon application of the Plaintiff herein, the above and entitled action is dismissed without prejudice to refiling pursuant to Fed. Rule of Civ. Proc. rule 41, U.S.C.A. as it relates to voluntary dismissal where service of process has not as yet been accomplished.

So ordered this 21 day of December, 1987.

S/ THOMAS R. BRETI

---

JUDGE OF THE UNITED STATES  
DISTRICT COURT OF THE NORTHERN  
DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JERRY L. HAYDEN,

Plaintiff,

vs.

PILOT LIFE INSURANCE COMPANY,

Defendant.

No. 85-C-1029-C

PILOT LIFE INSURANCE COMPANY,

Plaintiff,

vs.

JERRY L. HAYDEN, et al.,

Defendants.

No. 86-C-687-C

**F I L E D**

**DEC 21 1987**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This matter comes before the Court pursuant to a Stipulation for Dismissal with Prejudice between Pilot Life Insurance Company and Milton A. Peters. Pursuant to the Stipulation of parties, it is hereby ORDERED as follows:

1. The claims of Pilot Life against Milton A. Peters are hereby dismissed with prejudice as to Peters only;
2. The terms of the Stipulation for Dismissal with Prejudice signed by Pilot and Peters are hereby adopted by the Court and incorporated herein by reference;
3. Each party will bear its own costs and attorney's fees.

ENTERED this 21 day of December, 1987.

(Signed) R. Dels Book

UNITED STATES DISTRICT JUDGE

**F I L E D**

**DEC 21 1987**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IONE BOSS, et al.,

Plaintiffs,

vs.

G.P.P.A.W. -- EMPLOYERS  
RETIREE TRUST, et al.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 84-C-269-E  
AND 84-C-147-E  
(Consolidated)

A M E N D E D  
O R D E R

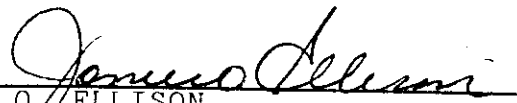
The Court has before it for its consideration the application of the individual Plaintiffs in Case No. 84-C-269-E to dismiss their claims without prejudice to either refiling the case or to receiving the benefit of any order issued in the companion case, 84-C-147-E. In response, the Defendants request the Court to dismiss the case with prejudice, or to impose upon the Plaintiffs the attorney's fees and expenses of the Defendants as a condition to dismissal, or by conditioning a refiling of the action upon payment of Defendants' attorney's fees and expenses.

Under Rule 41(a)(2) an action shall not be dismissed at the Plaintiff's instance except upon order of the Court and upon such terms and conditions as the Court deems proper. In determining whether conditions of dismissal are required, the Court must consider the interest of both the Plaintiffs and the Defendants. 5 Moore's Federal Practice, ¶41.05[1] (2nd Ed. 1987). Although the Court may impose the payment of Defendants' attorney's fees and costs as a condition for dismissal, a

dismissal with prejudice is not justified unless the Defendant will suffer some prejudice other than the mere prospect of a second lawsuit. 5 Moore's Federal Practice, ¶41.05[1], supra. Spencer v. Moore Business Forms, Inc., 87 F.R.D. 118 (N. D. Ga. 1980). Because no dispositive motion has been granted in favor of the Defendants and against the individual Plaintiffs, there is no basis for the Court to dismiss the action with prejudice. Furthermore, because of the participation of Liberty Glass in the filing of the action, the Court believes it would be unjust to impose the payment of the Defendants' attorney's fees and costs upon the individual Plaintiffs.

Accordingly, the application for dismissal of claims of the individual Plaintiffs is granted without prejudice. The Court having previously held that the state fiduciary claims are preempted under ERISA, and having held that Plaintiff Liberty Glass Company has no standing to maintain the action under ERISA, Liberty Glass is no longer a party to the action. Therefore, the action numbered 84-C-269-E is dismissed in its entirety.

DATED this 21<sup>st</sup> day of December, 1987.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE HARDESTY COMPANY, INC.,  
a corporation,

Plaintiff,

vs.

A.B. STEWART and LORA N.  
STEWART,

Defendants.

No. 87-C-826-B

**FILED**

**DEC 18 1987**

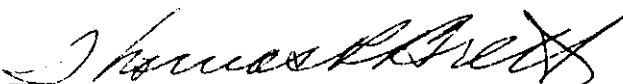
**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

JUDGMENT

This action came on before the Court, in chambers, pursuant to the Joint Application for Entry of Judgment filed by the plaintiff and defendants herein. The Court, having reviewed the file and considered the representations and requests for relief made in the Complaint and the Joint Application for Entry of Judgment, orders and adjudges as follows:

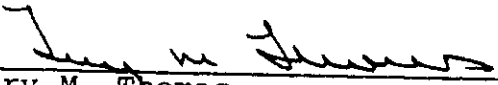
IT IS ORDERED AND ADJUDGED that the plaintiff, The Hardesty Company, Inc., recover of the defendants, A. B. Stewart and Lora N. Stewart, jointly and severally, the sum of \$315,717.80 inclusive of costs and fees in this action, with interest thereon to accrue at the rate provided by law.

Dated this 17 day of <sup>December</sup> ~~November~~, 1987.




THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM:

  
Terry M. Thomas  
Norman, Wohlgemuth & Thompson  
909 Kennedy Bldg.  
Tulsa, OK 74103

Attorneys for Plaintiff, The  
Hardesty Company, Inc.

  
J. Penny Moffett  
Conner & Winters  
2400 First National Tower  
Tulsa, OK 74103

Attorney for Defendants,  
A. B. Stewart and Lora N. Stewart

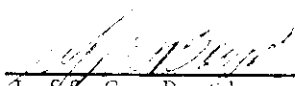
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Waldron Forest Products Inc. be granted judgment against Defendant Crews Building Materials Inc. in the amount of \$28,521.14 plus interest at the rate of 10.03% per annum from August 1, 1987 until

paid, plus \$1,200.00 in attorney fees, and \$150.00 cost.

by THOMAS R. BRETT

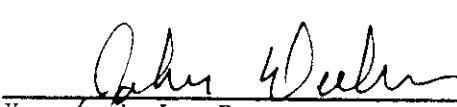
JUDGE OF THE DISTRICT COURT

APPROVED AS TO CONTENT AND FORM:

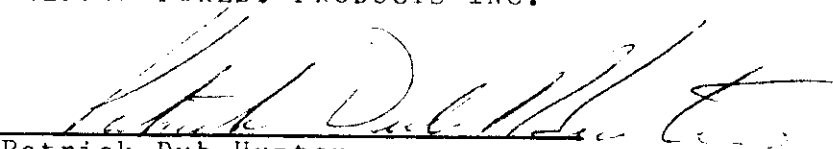
  
\_\_\_\_\_  
Jeff G. Boyd  
111 W. Fifth Street  
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT  
CREWS BUILDING MATERIALS, INC.

\_\_\_\_\_  
Douglas Crews, President  
Crews Building Materials, Inc.

  
\_\_\_\_\_  
Kenneth L. Brune  
John R. Decker  
BRUNE, PEZOLD, RICHEY & LEWIS  
700 Sinclair Building  
Six East Fifth Street  
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF  
WALDRON FOREST PRODUCTS INC.

  
\_\_\_\_\_  
Patrick Dub Hunter  
Waldron Forest Products Inc.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BONNIE M. FARRIS,

Plaintiff,

vs.

OTIS R. BOWEN, M.D.,  
Secretary of Health and  
Human Services,

Defendant.

**FILED**

**DEC 18 1987**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

CIVIL ACTION NO. 87-C-742-B

O R D E R

For good cause shown, pursuant to 42 U.S.C. §405(g),  
this cause is remanded for further administrative action.

Dated this 17 day of December, 1987.

**S/ THOMAS R. BREIT**

---

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

DEC 18 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

G. NELSON REISER,

Plaintiff,

vs.

PRUDENTIAL PROPERTY & CASUALTY  
INSURANCE COMPANY,

Defendant.

Case No. 87-C-268-E

O R D E R

NOW on this 17<sup>th</sup> day of December, 1987, this matter comes on for hearing pursuant to the joint application for dismissal with prejudice, and the Court finds justifiable cause therefor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Application be granted and that the above-entitled matter be dismissed with prejudice to re-filing.

\_\_\_\_\_  
JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Osage County Conservation District )  
 )  
Plaintiff(s), )  
 )  
vs. )  
 )  
Surface Interest Only of 200 acres, etc. )  
 )  
Defendant(s). )

No. 85-C-957-E

**FILED**

DEC 18 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Rule 36(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on November 16, 1987. No action has been taken in the case within thirty (30) days of the date of the notice. /  
as to defendant Bill Strom

Therefore, it is the Order of the Court that this action is in all respects dismissed., as to defendant Bill Strom.

Dated this 17<sup>th</sup> day of December, 1987.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1987

DAVID LEROY WIGGINS,

Plaintiff,

v.

R. L. (BOB) DICK, CHIEF OF  
POLICE OF THE CITY OF TULSA,  
OKLAHOMA and THE CITY OF  
TULSA, OKLAHOMA, a municipal  
corporation,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-238-B ✓

J U D G M E N T

In accord with the Order entered this date dismissing this action with prejudice, Judgment is hereby entered in favor of the Defendants, R. L. (Bob) Dick, Chief of Police of the City of Tulsa, Oklahoma, and the City of Tulsa, Oklahoma, a municipal corporation, and against the Plaintiff, David Leroy Wiggins. Costs are assessed against the Plaintiff.

DATED this 17 day of December, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID LEROY WIGGINS,

Plaintiff,

v.

R. L. (BOB) DICK, CHIEF OF  
POLICE OF THE CITY OF TULSA,  
OKLAHOMA and THE CITY OF  
TULSA, OKLAHOMA, a municipal  
corporation,

Defendants.

No. 87-C-238-B ✓

**FILED**


**DEC 17 1987** m

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

O R D E R

Before the Court for decision is the Plaintiff's motion to dismiss the above-entitled action with prejudice. The Plaintiff's counsel represented at the pretrial hearing held December 17, 1987, that he was unable to continue prosecuting this action in good faith and therefore moved to dismiss with prejudice. Therefore, the case is dismissed with prejudice. The parties should file any requests for costs and attorney fees within 10 days from the date of this order.

IT IS SO ORDERED, this 17 day of December, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

TULSA ADJUSTMENT BUREAU, INC.,  
A Corporation,

Plaintiff,

vs.

GEORGE W. LUTHER AND ELIZABETH LUTHER  
d/b/a LU-BET PUBLISHING CO.,

Defendants,

GEORGE W. LUTHER AND ELIZABETH LUTHER  
d/b/a LU-BET PUBLISHING CO.,

Third Party  
Plaintiffs,

v.

SOUTHWESTERN BELL TELEPHONE COMPANY  
AND A T & T,


Third Party  
Defendants.

NO. 87-C-312-B

DISMISSAL AND NOTIFICATION OF FINAL PAYMENT

COMES NOW the Plaintiff, Tulsa Adjustment Bureau, Inc., and hereby dismisses the above entitled cause with prejudice and states that notification is hereby given to the Court and the parties involved that final payment in accordance with the terms of the Agreed Journal Entry of Judgment filed by the above named parties on November 3, 1987, has been received by the Plaintiff's attorney and that all the terms of the above order of the Court have been met and complied with by all the parties involved.

DATED this 17<sup>th</sup> day of December, 1987.

  
MARYLINN G. MOLES OBA #11936  
Attorney for Plaintiff

JACOBUS & ASSOCIATES  
4143 E. 31st.  
Tulsa, OK 74135  
(918) 749-8891

CERTIFICATE OF MAILING

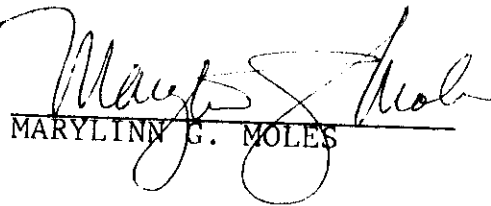
I, do hereby certify that on the 17<sup>th</sup> day of December, 1987, a true and correct copy of the above and foregoing, was mailed, with sufficient postage thereon fully prepaid, to:

George M. Makohin, OBA #5639, Attorney for Southwestern Bell Telephone Co., 800 North Harvey, Room 310, Oklahoma City, OK 73102,

Terry M. Thomas, Attorney for A T & T, NORMAN, WOHLGEMUTH & THOMPSON, 909 Kennedy Bldg., Tulsa, OK 74103,

and

Philip K. Blough, II, Attorney for the Defendants, 324 S. Main Mall, Suite 510, Tulsa, OK 74103.

  
MARYLIN G. MOLES

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
DEC 17 1987

MELVIN EDWARDS,

Plaintiff,

v.

DAVID MOSS, et al,

Defendants.

87-C-818-B

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Plaintiff's Motion to Proceed in forma pauperis was granted and Plaintiff's Complaint was filed on the 20th day of November, 1987. Plaintiff brings this action pursuant to 42 U.S.C. Section 1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons:

In Count I of the Complaint, Plaintiff Edwards alleges that Tulsa County District Attorney, David Moss, denied him a fair and impartial trial by using perjured testimony in violation of Plaintiff's rights. In the case of Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), the Supreme Court held that the same public policy considerations underlying the common-

law rule of absolute immunity for prosecutorial conduct, also applies to shield prosecutors from civil liability under 42 U.S.C. §1983. Pachtman, 424 U.S. at 427. Consequently, since the allegedly violative conduct was an aspect of Defendant Moss' role as an advocate, Defendant Moss is entitled to absolute immunity. Pachtman, 424 U.S. at 430-31. Thus, Plaintiff can make no rational argument on the law and facts against this Defendant and the action against Defendant Moss should be dismissed pursuant to 28 U.S.C. §1915(d). Yellen v. Cooper, No. 86-1430, slip op. (10th Cir. September 9, 1987).


In Count II of the Complaint, Plaintiff alleges that his defense counsel, Defendant O'Carroll; (1) permitted the introduction of perjured testimony without objection; (2) withheld evidence favorable to the defense; and (3) represented Plaintiff incompetently and ineffectively.

One requirement for bringing an action pursuant to §1983 is that the Defendant acted "under color of law". Monroe v. Pape, 365 U.S. 167 (1961). Plaintiff has not alleged, however, that Defendant O'Carroll was a state actor nor has he alleged that Defendant O'Carroll conspired with a state actor, which could warrant a finding of state action. E.g. Dennis v. Sparts, 449 U.S. 24 (1980). Consequently, Plaintiff's claim against Defendant O'Carroll as a private individual is not cognizable under 42 U.S.C. §1983. Therefore, Plaintiff can make no rational argument on the law and these facts against this Defendant and the action against O'Carroll should also be dismissed under 28 U.S.C. §1915(d). Van Sickle v. Holloway, supra.

In Count III of his Complaint, Plaintiff alleges that Tulsa County District Court Judge Clifford Hopper committed various errors during Plaintiff's trial. Plaintiff's final count is also without merit. It is well settled in the law that judges cannot be held responsible to private parties in civil actions for their judicial acts, however injurious may be those acts. Stump v. Sparkman, 435 U.S. 349, reh'g denied, 436 U.S. 951 (1978). This doctrine of absolute judicial immunity prevents Plaintiff from being able to make a rational argument on the law and these facts to support his claim against Defendant Hopper. Therefore, Plaintiff's claim against Defendant Hopper should be dismissed as without merit pursuant to 28 U.S.C. §1915(d). Yellen v. Cooper, supra.

Accordingly, it is the Order of this Court that Plaintiff's action be dismissed as obviously without merit.

It is so ORDERED this 4 day of December, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1987

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERALD E. THOMPSON,

Defendant.

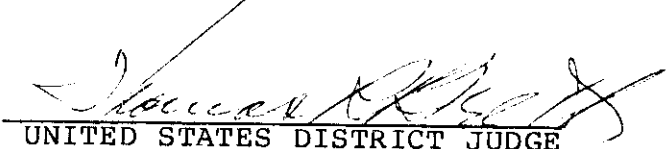
CIVIL ACTION NO. 87-C-674-B

AGREED JUDGMENT

This matter comes on for consideration this 16  
of December, 1987, the Plaintiff appearing by Tony M. Graham,  
United States Attorney for the Northern District of Oklahoma,  
through Peter Bernhardt, Assistant United States Attorney, and  
the Defendant, Gerald E. Thompson, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, Gerald E. Thompson,  
has not filed an Answer but in lieu thereof has agreed that he  
is indebted to the Plaintiff in the amount alleged in the  
Complaint and that judgment may accordingly be entered against  
him in the amount of \$2,680.00, plus interest of \$2,890.40 as of  
April 22, 1987, plus interest thereafter at the rate of 7  
percent per annum until judgment, plus interest thereafter at  
the legal rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Gerald E. Thompson, in the amount of \$2,680.00, plus interest of \$2,890.40 as of April 22, 1987, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.93 percent per annum until paid, plus the costs of this action.

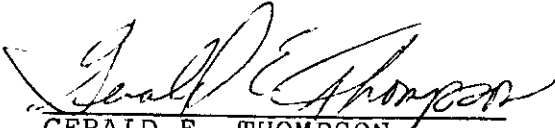
  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT  
Assistant U.S. Attorney

  
GERALD E. THOMPSON

PB/mp



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1987

TRANSWESTERN MINING COMPANY, )  
a corporation, )

Plaintiff, )

vs. )

VANNOY HILDEBRAND, et al., )

Defendants. )

Case No. 86-C-477-B

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

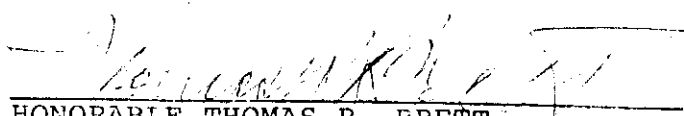
ORDER

This matter comes on before the Court upon the Motion for Approval of Settlement between Plaintiff Transwestern Mining Company and Defendant Kenneth L. Stainer, Trustee of the Bankruptcy Estate of Leon's Coal Company, a partnership. The Court finds that such Motion should be granted, and it is, therefore,

ORDERED that the foregoing Motion for approval of settlement is hereby granted.

IT IS FURTHER ORDERED that all of the claims of Plaintiff and Defendant Kenneth L. Stainer, Trustee, against each other are hereby dismissed with prejudice, with each party to bear his own costs and attorneys' fees.

Dated this 16<sup>th</sup> day of December, 1987.

  
HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BILLY JOE SIMPSON, )  
 )  
Defendant. ) CIVIL ACTION NO. 87-C-374-C

JUDGMENT

This matter comes on for consideration this 15  
of December, 1987, Plaintiff appearing by Tony M. Graham, United  
States Attorney for the Northern District of Oklahoma, through  
Peter Bernhardt, Assistant United States Attorney, and Defendant  
Billy Joe Simpson appearing by his attorney, Gene C. Howard.

The Court, being fully advised and having examined the  
file herein, finds that Defendant Billy Joe Simpson was served  
with Summons and Complaint; that said Defendant filed his Answer  
herein on June 26, 1987; that on July 17, 1987, Plaintiff filed  
its Amendment to Complaint and served Defendant with same by  
mailing a copy of the Amendment to Defendant's attorney, Gene C.  
Howard, 2021 South Lewis, Suite 570, Tulsa, Oklahoma 74104, and  
that Defendant Billy Joe Simpson filed Confession of Judgment on  
August 18, 1987.

The Court further finds that Plaintiff United States  
of America is entitled to judgment in the amount of Ten Thousand  
Dollars (\$10,000), plus interest at the legal rate from the date  
of judgment until paid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff have and recover judgment against Defendant Billy Joe Simpson in the amount of Ten Thousand Dollars (\$10,000) plus interest at the current legal rate of 6.00 percent per annum from the date of judgment until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

LESTER E. BONSALE  
Plaintiff  
P.O. Box 4160  
Tulsa, Oklahoma 74159

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

*Entered*

PAUL WM. POLIN and  
MARSHA POLIN,

Plaintiffs,

vs.

JEWS FOR JESUS a/k/a  
HINENI MINISTRIES,

Defendant.

No.: 87-C-38 E

**FILED**

**DEC 16 1987**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

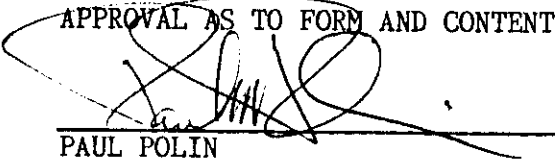
IT IS THE ORDER of this Court that the first cause of action of the Plaintiffs, Paul William Polin and Marsha Polin, shall be and is hereby dismissed as per the Stipulation of Dismissal filed herein.


DATED THIS 16 day of Dec, 1987.

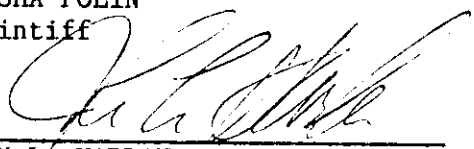
*Approved*

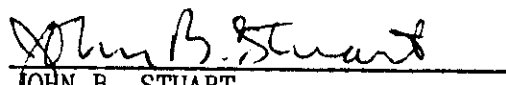
H. DALE COOK  
U.S. District Judge

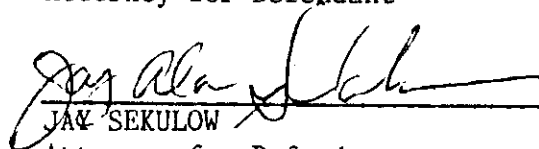
APPROVAL AS TO FORM AND CONTENT:

  
PAUL POLIN  
Plaintiff

  
MARSHA POLIN  
Plaintiff

  
JOHN L. HARLAN  
Attorney for Plaintiff

  
JOHN B. STUART  
Attorney for Defendant

  
JAY SEKULOW  
Attorney for Defendant